

The Gazette of India



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NOTICE

The undermentioned Gazettes of India Extraordinary were published during the week ending the 11th December 1951 :—

Issue No.	No. and date	Issued by	Subject
198	S. R. O. 1914, dated the 1st December 1951.	Ministry of Food and Agriculture.	Fixation of maximum price of vegetable oil products.
199	S. R. O. 1915, dated the 1st December 1951.	Ministry of Law	Fixation of certain dates on which a poll shall be taken at elections in the State of Rajasthan.
	S. R. O. 1916, dated the 1st December 1951.	Ditto	Fixation of polling hours from 8 A. M. to 4 P. M. in the State of Rajasthan.
200	S. R. O. 1917, dated the 3rd December 1951.	Ditto	Fixation of certain dates on which a poll shall be taken in the State of Assam.
	S. R. O. 1918, dated the 3rd December 1951.	Ditto	Fixation of polling hours from 8 A. M. to 4 P. M. in the State of Assam.
201	S. R. O. 1919, dated the 1st December 1951.	Ditto	Notifications regarding valid nominations in connection with the elections from certain constituencies.
	S. R. O. 1920, dated the 3rd December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the specified areas of the State of Bihar.
	S. R. O. 1921, dated the 3rd December 1951.	Ditto	Fixation of polling hours from 8 A. M. to 4 P. M. in the State of Bihar.

Issue No.	No. and date	Issued by	Subject
202	S. R. O. 1922, dated the 30th November 1951.	Min try of Law	Notifications regarding lists of v nominations in connection with v elections for certain constituencies.
	S. R. O. 1923, dated the 3rd December 1951.	Ditto	Notifications regarding lists of valid nominations in connection with the elections for certain constituencies.
	S. R. O. 1924, dated the 4th December 1951	Ditto	Fixation of polling hours from 8 A. to 12-0 P. M. and 1-30 P. M. to 5 P. M. in the State of Uttar Pradesh.
	S. R. O. 1925, dated the 4th December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the State of Uttar Pradesh.
	S. R. O. 1926, dated the 4th December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the Parliamentary constituencies of the State of Manipur.
	S. R. O. 1927, dated the 4th December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the Council of State constituencies of the State of Manipur.
	S. R. O. 1928, dated the 4th December 1951.	Ditto	Fixation of polling hours from 7-30 A. M. to 3-30 P. M. in the State of Manipur.
203	S. R. O. 1934, dated the 6th December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the Parliamentary constituencies of the State of Tripura.
	S. R. O. 1935, dated the 6th December 1951.	Ditto	Fixation of certain date or dates on which a poll shall be taken in the Council of States constituencies of the State of Tripura.
204	S. R. O. 1967, dated the 7th December 1951.	Ditto	Amendment made in the Notification No. S. R. O. 1793, dated the 21st November 1951.
	S. R. O. 1968, dated the 7th December 1951.	Ditto	Further amendment made in the Notification No. S. R. O. 1618, dated the 20th October 1951.

Copies of the Gazette Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3**Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).****MINISTRY OF LAW***New Delhi, the 8th December 1951*

S.R.O. 1986.—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that the following further amendment shall be made in the Notification of the Government of India in the Ministry of Law, No. F.35-I/50-L., dated the 26th January, 1950, relating to the execution of contracts and assurances of property, namely:—

In Part XXXII of the said notification, for item 3, the following item shall be substituted, namely:—

"3. All deeds and instruments relating to matters other than those specified in items 1 and 2 above; by the Adviser to the Governor of Assam for Tribal Areas.

[No. F.35-I/51-L.]

SHRI GOPAL SINGH, Dy. Secy.**MINISTRY OF HOME AFFAIRS***New Delhi, the 3th December 1951*

S.R.O. 1987.—In exercise of the powers conferred by clause (d) of the proviso to sub-rule (1) of rule 3 of the Indian Arms Rules, 1951, the Central Government is pleased to direct that the exemption from the operation of the prohibitions and directions contained in the Indian Arms Act, 1878 (XI of 1878), conferred by the said sub-rule on certain persons specified in entry 4 of Schedule I to the said Rules shall cease to extend to Ammanakuttanda Nanjappa, Arji Village, Virajpet, South Coorg.

[No. 9/59/51-Police (I).]

S.R.O. 1988.—In exercise of the powers conferred by section 27 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to grant exemption from all the prohibitions and directions contained in sections 6, 10 and 13 to 15 of the said Act to—

- (a) Nepalese Army Guards proceeding from Raxaul to Jogbani and thence to Nepalese territory and back, in respect of nine .38 bore revolvers with one hundred and eight cartridges, ten .38 bore sten guns with two thousand and one hundred cartridges, three .45 bore tommy guns with six hundred cartridges, three .303 bren guns with three thousand cartridges one .303 machine gun with two thousand cartridges and one hundred .303 rifles with six thousand cartridges;
- (b) Nepalese Army Guards proceeding from Raxaul to Jayanagar and thence to Nepalese territory and back, in respect of six .38 bore revolvers with seventy-two cartridges, seven .38 bore sten guns with one thousand and four hundred cartridges, two .45 bore tommy guns with four hundred cartridges, two .303 bren guns with two thousand cartridges, one .303 machine gun with two thousand cartridges and seventy-seven .303 rifles with four thousand cartridges;
- (c) Nepalese Army guards escorting His Majesty the King of Nepal and moving between Jogbani and Simraha and between Darbhanga and Jayanagar, in respect of two .38 bore revolvers with twenty-four cartridges and twenty-eight .303 rifles with one thousand and four hundred cartridges;
- (d) His Majesty the King of Nepal in respect of one .450 bore double barrel breech loading rifle with seven-hundred cartridges and two .38 bore revolvers with twenty-four cartridges; and

- (e) Personal guard of His Excellency the Prime Minister of Nepal in respect of three .38 bore revolvers with thirty six cartridges and one tommy gun with eighty cartridges.

[No. 9/61/51-Police. I.]

U. K. GHOSHAL, Dy. Secy.

New Delhi, the 5th December 1951

S.R.O. 1989.—In exercise of the powers conferred by clause (1) of article 243 of the Constitution, the President hereby directs that the Chief Commissioner, Andaman and Nicobar Islands, shall, subject to the control of the President, exercise the powers and functions of a State Government under the proviso to section 4, sub-section (3) of section 5, sub-sections (1), (2) and (3) of section 7 and sub-section (3) of section 9 of the Cinematograph Act, 1918 (II of 1918).

[No. 432-A/48-A.N.]

E. C. GAYNOR, Under Secy.

MINISTRY OF STATES

New Delhi, the 21st November 1951

S.R.O. 1990.—In exercise of the powers conferred by section 2 of the Part C States (Laws) Act, 1950 (XXX of 1950), the Central Government hereby extends to the State of Bhopal, the United Provinces Town Areas Act, 1914 (United Provinces Act II of 1914) as at present in force in the State of Uttar Pradesh subject to the following modifications, namely:—

Modifications

1. Throughout the Act except where otherwise expressly provided—
 - (a) for the words "State Government" the words "Chief Commissioner" shall be substituted.
 - (b) for the word "Commissioner" the words "Revenue Commissioner" shall be substituted.
2. For sub-section (2) and (3) of section 1 the following sub-sections shall be substituted, namely:—
 - (2) It extends to the whole of the State of Bhopal.
 - (3) It shall come into force on such date as the Chief Commissioner may by notification in the official gazette, appoint.
3. Clause (9) of section 2 shall be omitted.
4. In section 5—
 - (a) clause (c) of sub-section (2) shall be omitted;
 - (b) for the proviso to sub-section (4) the following proviso shall be substituted, namely:—

"Provided that such number of seats as bear, as nearly as may be, the same proportion to the total number of seats allotted to the ward, as the population of the Scheduled Castes in the Ward bears to the total population of the ward shall be reserved for the scheduled castes."
 - (c) Sub-sections (5) and (6) shall be omitted
5. In section 6—
 - (a) in sub-section (1)
 - (i) the words "or nomination" in both the places where they occur shall be omitted;
 - (ii) in the proviso that words "or appointed" shall be omitted;
 - (b) in sub-section (3) the words "or reappointment" shall be omitted.
6. In clause (d) of sub-section (2) of section 7 for the words "at least one of the vernaculars of the State", the words "Hindi or Urdu" shall be substituted.

7. For section 14, the following section shall be substituted, namely:—

“14. Subject to any general rules or special Orders of the State Government in this behalf the taxes and fees, which a committee may impose, are the following:—

- (a) a tax on professions, trades, callings and employments not exceeding such rates as may be prescribed provided that the total amount of such tax payable in respect of any one person shall not exceed two hundred and fifty rupees per annum.
- (b) a tax upon rents and buildings payable by the owner thereof not exceeding such rate as may be prescribed.
- (c) a tax on persons assessed according to their circumstances and property not exceeding such rates and subject to such limitations as may be prescribed.
- (d) fees for licensing hackney carriages.
- (e) tehbazari leviable for the use of public land or public roads.
- (f) fees for licensing carts.
- (g) fees for licensing Palledars.”

8. In section 21 for the words “Uttar Pradesh” the words “State of Bhopal” shall be substituted.

9. In section 22—

- (a) for the words “Chaukidari fund” in clause (c) the words “Notified Area Committee” shall be substituted.
- (b) Clause (g) shall be omitted

10. In section 23—

- (a) in clause (a) the words “State Government” shall stand unmodified.
- (b) in clause (d) the words “or by a district board” occurring at the end shall be omitted.

11. Section 38 shall be omitted.

12. In sub-section (2) of section 39A, for the words “if he think fit” the words “if he thinks fit” shall be substituted.

13. Sections 40 and 41 shall be omitted.

14. In sections 42 and 43—

for the words “the Bengal Chaukidari Act, 1856” the words “the Bhopal State Notified Areas Act, 1946 (XII of 1946)” shall be substituted.

Annexure

The United Provinces Town Areas Act, 1914 (United Provinces Act II of 1914) as amended by the United Provinces Town Areas (Amendment) Act, 1947 (VI of 1948), the Uttar Pradesh Town Areas (Validation and Amendment) Act, 1950 (XXIII of 1950), and modified by this notification.

THE UNITED PROVINCES TOWN AREAS ACT, 1914

UNITED PROVINCES ACT II OF 1914

An Act to make better provision for the sanitation, lighting and improvement of town areas in the United Provinces of Agra and Oudh.

WHEREAS it is expedient to make better provision for the sanitation, lighting and improvement of town areas in the United Provinces of Agra and Oudh;

It is hereby enacted as follows:—

CHAPTER I—PRELIMINARY

1. *Short title, commencement and extent.*—This Act may be called the United Provinces Town Areas Act, 1914.

(2) It extends to the whole of the State of Bhopal.

(3) It shall come into force on such date as the Chief Commissioner may by notification in the official gazette, appoint,

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(1) an act shall be deemed to be the act of a committee when it is done with the previous consent of, or of a majority of, all such members for

the time being serving on the committee as are not incapacitated by illness or absence from the town area from signifying their consent thereto.

Provided that it is done with the previous consent of at least two members of the committee;

- (2) "annual value" means the gross annual rent at which any house or land may be reasonably expected to let from year to year;
- (3) "house" includes any shop, warehouse, shed or enclosure used for keeping carts or cattle;
- (4) "land" does not include land used for agricultural purposes or pastoral purposes,
- (5) "occupier" means, in the case of a house let out to temporary lodgers or to travellers, the person who receives or is entitled to receive, the rents or payments from the lodgers or travellers and in other cases the tenant or tenants or any person who occupies the house or land,
- (6) "prescribed" means prescribed by this Act or by any rule or order made thereunder;
- (7) "public road" means any road, street, thoroughfare, passage or place over which the public have a right of way;
- (8) "town area" means any local area which the provincial Government has declared or defined under section 3 to be a town area;
- (9) "district medical officer of health" means the officer appointed by the Chief Commissioner to perform the duties specified in section 27; and
- (10) "agricultural income" shall have the same meaning as in the Indian Income-tax Act, 1922 (Act XI of 1922).

CHAPTER II—TOWN AREAS, COMMITTEE AND SERVANTS

Town areas.

3 *Declaration and definition of two areas*—The Chief Commissioner may, by notification in the official gazette,—

- (a) declare any town, village, suburb, bazar or inhabited place to be a town area, for the purposes of the Act, and may unite, for the purpose of declaring the area constituted by such union to be a town area, the whole or a portion of any town, village, suburb, bazar or inhabited place with the whole or a portion of any other town, village, suburb, bazar or inhabited place;
- (b) define the limits of any town area for the like purposes;
- (c) include or exclude any area in or from any town area so declared or defined; and
- (d) at any time cancel any notification under this section:

Provided that an agricultural village shall not be declared, or included within the limits of a town area

(2) The decision of the Chief Commissioner that any inhabited area is not an agricultural village within the meaning of the proviso to sub-section (1) of this section shall be final and conclusive, and the publication in the official gazette of a notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision.

4 *Delegation of certain powers of the district magistrate to some other officer of the revenue staff*—The prescribed authority or if none is appointed the district magistrate may, by written order and subject to such conditions and restrictions as he may think fit to impose, delegate all or any of the powers conferred on him by this Act or by rules framed under this Act, other than his power under section 39A to the officer-in-charge of the sub-division in which the town area is situated or to any other stipendiary officer of the revenue staff of the district above the rank of tasildar:

Provided that the prescribed authority or if none is appointed the district magistrate may at any time revise an order passed by such officer under the powers so delegated

5. (1) A Committee shall be established for each Town Area.

(2) The Committee shall consist of—

- (a) the Chairman;

(b) such number of elected members not less than nine nor more than fifteen, as the local Government may prescribe;

(d) one woman, if none is elected, to be co-opted by the elected members of the Committee in the manner prescribed.

(3) The member co-opted under sub-section (2) shall have all the rights and privileges conferred and be subject to all the liabilities imposed on an elected member by this Act

(4) The area of the Committee shall be divided by the Provincial Government or the prescribed authority into such number of wards as may be convenient for the purposes of election:

Provided that such number of seats as bear, as nearly as may be, the same proportion to the total number of seats allotted to the ward, as the population of the Scheduled Castes in the ward bears to the total population of the ward shall be reserved for the scheduled castes.

Provided that in assigning the seats such number out of them as shall be in proportion to their population in the area of the said Committee shall be assigned to Scheduled Castes.

Explanation.—(i) "Minority community" means Muslim or non-Muslim community if, according to the latest Government census, the total population of such community is not less than five per cent. and not more than 30 per cent. of the whole population of the area of the Committee

(ii) "Joint electorate system" means a system under which the electors belonging to the minority and non-minority communities vote jointly and not as electors of separate communities.

6. Terms of office of a member of a Committee.—(1) The term of office of a member of a committee shall be four years subject to the provisions of sections 7 and 7A, and shall commence from the date of election or when the election has been made before the vacancy has occurred, from the date on which the vacancy occurs:

Provided that the term of office of a member elected to fill a casual vacancy shall be the residue of the term of the outgoing member:

Provided also that for the purpose of making any change in the composition of a committee, or holding or holding an election, or for any similar purpose the provincial Government may curtail or extend the term of office of the members or of any member of a committee.

(2) If a member wishes to resign he shall forward his resignation in writing to the prescribed authority or if none is appointed the district magistrate. He shall be deemed to have vacated his office from the date of receipt by the committee of information that his resignation has been accepted by the prescribed authority or if none is appointed the district magistrate.

(3) An outgoing member shall if otherwise qualified, be eligible for re-election.

6A. Prescribed authority, means the authority notified as such by the Chief Commissioner.

7. Qualification of electors.—(1) A person, notwithstanding that he is qualified under the rules, shall not be enrolled as an elector or be nominated or be elected as chairman or as a member of the committee, or continue to be an elector or a member or chairman if he is, or becomes, subject to the following disqualifications:—

(a) That he has not attained the age of 21 years; or

(b) that he is not a British subject; or

(c) that he has been adjudged by a competent court to be of unsound mind; or

(d) that he is an undischarged insolvent; or

(e) that he has been ordered to find security for good behaviour in consequence of proceedings taken under section 109 or section 110 of the Code of Criminal Procedure, such order not having been subsequently reversed and a period of five years from the date of the order has not elapsed; or

(i) Provided that a disqualification under clause (e) may be removed by an order of the Provincial Government in this behalf.

(ii) Provided further that an elector who has failed to pay the dues of more than one year to the town area shall be disqualified from being elected as a member of the committee.

(2) A person shall not be nominated or be elected as a chairman or member of the committee or continue to be chairman or member if he is, or becomes, subject to the following disqualifications :

- (a) that he has been convicted by a competent court (such conviction being still in full force and effect) for an offence which in the opinion of the Provincial Government implies moral turpitude, or has been dismissed from service of the Government for conduct which, in opinion of the Provincial Government, implies moral turpitude, or
- (b) that he is debarred from practising as a legal practitioner by order of any competent authority ; or
- (c) that he holds any place of profit in the gift or disposal of the committee ; or
- (d) that he is unable to read and write English or Hindi or Urdu ; or
- (e) that he is a servant of the Government ;

Provided that in case (a) and (b) the disqualification may be removed by an order of the Chief Commissioner in this behalf.

7A. (1) The prescribed authority or if none is appointed the Commissioner may, after affording him an opportunity to make an explanation remove the Chairman or any member of a Committee who, in his opinion, has so abused his position as Chairman or member as to be unfit to act as such, is persistently remiss in the discharge of his duties as such chairman or member has failed to pay the dues of more than one year, to the Committee, or at the time of removal is subject to one or more of the disqualifications mentioned in section 7 :

Provided that the removal of the Chairman shall be subject to the sanction of the local Government.

7B. Liability of a member of a Committee for the loss, waste or misapplication of money or property belonging to a Committee.—Every member of a committee shall be liable for the loss, waste or misapplication of any money or other property belonging to the committee if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of the committee and a suit for compensation may be instituted against him by the committee with the previous sanction of the district magistrate or by the Chief Commissioner.

8. Duties of the Committee.—The duties of the committee shall be—

- (a) to perform any duty specifically assigned to it by this Act or by any rule or order made under this Act.
- (b) generally to render such assistance the prescribed authority or if none is appointed to the district magistrate in the discharge of his functions under this Act, as he may reasonably require.

8A. Election, term of office and duties of chairman.—(1) The Chairman of every committee shall be an elector of the town area.

(2) The chairman shall be elected by the electors of the town area at an election held simultaneously with the general election of members of the committee.

(3) When a vacancy occurs by reason of the death, removal or resignation of a chairman, a chairman shall be elected by the electors of the town area at a date to be fixed by the prescribed authority or if none is appointed to the district magistrate within one month of the vacancy.

(4) The term of office of a chairman shall expire on the expiry of the term of office of the members of a committee.

(5) If the chairman wishes to resign he shall forward his resignation in writing to the district magistrate. He shall be deemed to have vacated his office from the date of receipt by the committee of information that his resignation has been accepted by the district magistrate.

(6) Notwithstanding anything in sub-clauses (1) to (3) the prescribed authority or if none is appointed to the district magistrate shall appoint a chairman of a committee for the term of office immediately following a notification under section 3 declaring an area to be a town area.

(7) The duties of the chairman shall be—

- (a) to convene and preside at all meetings of the committee, to control the transaction of business thereat, and to maintain a record of such business ;

- (b) to supervise the collection of the tax (and any other dues) ;
- (c) to supervise the work of the servants of the committee ;
- (d) to conduct all correspondence on behalf of the committee ;
- (e) subject to the control of the committee, to apply the town fund to any or all of the purposes prescribed by section 23 ; and
- (f) to perform such other duties as may be required of or imposed on him by or under this Act.

8B. Election, term of office and resignation of vice-chairman.—(1) The committee shall elect a vice-chairman from among its members whenever a vacancy occurs.

(2) The term of office of the vice-chairman shall be one year from the date of his election, or the residue of his term of office as a member of the committee, whichever is less.

(3) If the vice-chairman wishes to resign he shall intimate in writing to the chairman his intention to do so, and on his resignation being accepted by the committee he shall be deemed to have vacated his office.

(4) In the absence of the chairman his duties shall be discharged by the vice-chairman.

Town Servant.

9. Establishment list.—(1) The committee shall, as soon as may be practicable, prepare an establishment list of the permanent staff of tax collectors and other servants necessary for carrying out the purposes of this Act and of the duties, salary and allowances to be attached to the respective post entered therein.

(2) The committee shall, when so required by the prescribed authority or if none is appointed district magistrate from time to time, revise the establishment lists prepared under sub-section (1).

(3) Every establishment list prepared under sub-section (1) or revised under sub-section (2) shall be subject to confirmation by the district magistrate, and in the event of that officer refusing to confirm any establishment list, it shall be altered by the committee under his direction.

10. Appointment and control of permanent staff.—(1) The chairman shall appoint the permanent staff prescribed in the establishment list, subject in the case of the bakshi to the approval of the prescribed authority or none is appointed the district magistrate.

(2) The chairman may fine, suspend or dismiss any member of the permanent staff so appointed, subject in the case of the dismissal of any member of the staff whose pay exceeds Rs. 15 a month to confirmation by the district magistrate, who shall give the member of the staff who has been so dismissed an opportunity of representing his case.

11. Appointment and control of temporary staff.—The committee may appoint such temporary staff as it may require to supplement the permanent staff on such remuneration as it may think proper.

12. Prohibition of unauthorized service.—Except in the manner prescribed by sections 9, 10 and 11, a person shall not be appointed a town servant or employee as such.

13. Town servants to be deemed public servants.—Every town tax collector or other town servant permanently or temporarily appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the India Penal Code.

14. Subject to any general rules or special orders of the Chief Commissioner in this behalf the taxes and fees which a committee may impose, are the following:

- (a) a tax on professions, trades, callings, and employments not exceeding such rates as may be prescribed provided that the total amount of such tax payable in respect of any one person shall not exceed two hundred and fifty rupees per annum.
- (b) a tax upon rents and buildings payable by the owner thereof not exceeding such rate as may be prescribed.
- (c) a tax on persons assessed according to their circumstances and property not exceeding such rates and subject to such limitations as may be prescribed.

(d) fees for licensing hackney carriages.

(e) tehbazari leviable for the use of public land or public roads.

(f) fees for licensing carts.

(g) fees for licensing Palledars.

15. Assessment of tax.—(1) Subject to any rules made in this behalf by the provincial Government, the committee established for any town area shall, as soon as may be, prepare a list of the persons liable to pay the tax imposed under section 14 and of the amounts to be paid respectively by such persons.

(2) The committee shall, when so required by the district magistrate from time to time, revise the assessment list prepared under sub-section (1).

(3) Every assessment in a list prepared under sub-section (1) or revised under sub-section (2) shall be subject to confirmation by the district magistrate, and any assessment which such magistrate refuses to confirm shall be altered by the committee under his direction.

(4) An assessment, when confirmed by the district magistrate, shall not be subject to alteration except upon revision of the assessment list under sub-section (2) or in pursuance of an order passed in appeal under the provisions of section 18.

“15A. Preliminary proposals or taxes.—(1) Subject to any rules made in this behalf by the Chief Commissioner, the Committee established for any town area shall, by resolution, frame proposals specifying—

(a) the tax, being one of the taxes described in section 14, which it desires to impose;

(b) the amount or rate leviable from any person or class of persons liable or to be made liable for the tax except where and in so far as any such amount or rate has not already been provided for in section 14;

(c) any other matter which the State Government may by rule require to be specified.

(2) The Committee shall also prepare a draft of the rules which it desires the State Government to make in respect of the matter referred to in section 39.

(3) The Committee shall, thereafter, publish, in the manner prescribed, the proposals framed under sub-section (1) and the draft rules framed under sub-section (2).

(4) Any inhabitant of the town area may, in the prescribed manner, file an objection in writing on such proposals and the Committee shall take into consideration the objections so filed and finally settle its proposals.

(5) The proposals so settled along with the draft rules shall be submitted to the prescribed authority or if none is appointed the District Magistrate.

15B Imposition of the tax.—(1) The prescribed authority or if none is appointed the District Magistrate may either reject the proposals or sanction them whether with or without modifications.

(2) Where the proposals are sanctioned with or without modification by the prescribed authority or if none is appointed the District Magistrate, he shall forward a copy of the draft rules on the subject to the State Government.

(3) After the rules have been framed by the State Government a copy thereof shall be forwarded to the prescribed authority or if none is appointed the District Magistrate and the Committee, and then the Committee, shall, as soon as may be, by a resolution direct the imposition of the tax with effect from a date to be specified and forward a copy of the resolution to the prescribed authority or if none is appointed the District Magistrate, who shall notify in the same manner prescribed.

(4) The notification under sub-section (3) shall be conclusive proof that the tax has been imposed in accordance with the provision of this Act.

15C. Procedure for altering taxes.—The provisions of sections 15-A and 15-B shall as far as may be applied for altering or abolishing tax already imposed under this Act.

15D. Abolition or modification of tax and its assessments, etc. by the State Government.—Notwithstanding anything contained in section 15-C the State Government may, in the manner and for the reasons as may be prescribed, abolish or modify the tax.”

16. Exemption from tax.—Subject to any rules made in this behalf by the Chief Commissioner the district magistrate may, by order, exempt in whole or in part from the payment of any tax imposed under this Act any person or class of persons or property or description of property.

17. Publication of assessment list.—The committee shall cause a copy of every assessment list prepared or revised under section 15 and confirmed by the prescribed authority or if none is appointed the district magistrate to be posted in a conspicuous place within the town area and shall cause a register of assessments to be maintained at such place and in such manner as the district magistrate may prescribe.

18. Appeals from assessment or levy of tax.—(1) An appeal against the assessment or levy of any tax shall lie to the prescribed authority or if none is appointed the district magistrate or to such magistrate as he may appoint in this behalf.

(2) A court-fee shall not be payable on an appeal presented under sub-section (1) of this section.

(3) An appeal under the said sub-section shall not be admitted after the expiry of thirty days from the date of posting under section 17, unless the appellant shows sufficient reason for failing to appeal within the said period.

(4) The decision of the appellate authority prescribed in sub-section (1) of this section shall be final and shall not be called in question in any court.

19. Payment of tax.—The tax shall be payable in such instalments, and each instalment shall become due on such date as the committee may, subject to any rules framed by the Chief Commissioner in this behalf, prescribe by notice posted in a conspicuous place within the town area:

Provided that any person so desirous may pay the whole year's tax in advance.

20. Writ of demand.—On failure of any person to pay any instalment of tax on or before the specified date the committee shall, ordinarily within fifteen days of such date, cause a writ of demand to be served on the defaulter, or delivered at or affixed to his place of residence within the town area, or addressed by registered post to such place of residence or any other place where he may be known to reside. Any postal charges incurred under this section may be added to the arrear claimed and recovered as such.

21. Recovery of arrears.—Arrears of any tax imposed under this Act may be recovered, on the expiry of three weeks from the date of the issue of a writ of demand, on application to a magistrate having jurisdiction within the limits of the town area or in any other place within the State of Bhopal where the defaulter may for the time being reside, by the attachment and sale of any movable or immovable property belonging to such defaulter and within the limits of such magistrate's jurisdiction.

NOTE—Board of Revenue Circular letter no. 4318—353-C., dated the 3rd October, 1934.—All such applications filed by the town area committees should be charged with a fee of eight annas under paragraph 2, clause (b) of article I, Schedule II of the Court Fees Act.

Town fund

22. The town fund.—For each town area there shall be formed a town fund, and there shall be placed to the credit thereof—

- (a) the proceeds of any tax imposed under the provisions of this Act;
- (b) all fines realized in cases in which prosecutions for offences committed within the limits of such town area are instituted under this Act or the rules made thereunder, or under section 34 of the Police Act, 1861, or under any other Act or rules under any other Act, in which provision is made for the credit of such fines to the town fund;
- (c) the balance (if any) standing at the credit of the Notified Area Committee of any town comprised in such town area at the date when this Act comes into force;
- (d) all sums ordered by a court to be placed to the credit of the town fund;
- (e) the sale-proceeds, except in so far as any private person is entitled to the whole or a portion thereof, of all dust, dirt, dung, or refuse (including the dead bodies of animals) collected by the town servants;
- (f) such portion of the rent or other proceeds of nazul property as the provincial Government may direct to be placed to the credit of the town fund;

- (g) all sums received by way of loan or gift; and
- (h) such other sums as may be assigned to the town fund by any general or special order of the Chief Commissioner.

23. Control of town fund.—Subject to any rules framed in this behalf by Chief Commissioner, the town fund shall be under the control of the committee and shall be applied to—

- (a) the repayment of the principal and interest of any sum advanced as a loan by the State Government for the purposes of this Act;
- (b) the payment of the salary and allowances of the establishment entertained under this Act;
- (c) the purchase of stationery and other contingent expenditure necessary for the purpose of this Act;
- (d) the payment of expenses incurred for the maintenance of public roads not being roads of which the maintenance is undertaken by any Government;
- (e) the payment of expenses incurred for the repair of public wells and tanks, or for the provision of an adequate supply of pure drinking water;
- (f) the payment of expenses incurred generally for carrying out the sanitation, drainage, lighting and improvement of the town area; and
- (g) the payment of any other sums which the Chief Commissioner may by general or special order declare to be an appropriate charge on the town fund.

NOTE.—For declaration made by the provincial Government under this section, see page 64.

24. Custody of town fund.—Subject to any rules made in this behalf by the provincial Government the chairman shall make arrangements for the proper custody of the town fund and for the remittance to such custody of all sums collected on behalf of or received to the credit of the town fund.

25. Power to require Committee to carry out certain orders.—The Chief Commissioner may, by order, require a committee to carry out any scheme detailed in such order for the drainage of the town area or for the provision of an adequate supply of pure drinking water for the town area or for the improvement of the roads or for the conservancy of the town.

CHAPTER IV—POWERS FOR SANITARY AND OTHER PURPOSES

26. Sanitation orders.—The committee may by general or special order in writing provide, and if so advised by prescribed authority or if none is appointed the district magistrate shall provide for all or any of the following matters within the town area, namely:

- (a) the regulation of offensive callings or trades;
- (b) the disposal of corpses by burning or burial;
- (c) the repair or removal of dangerous or ruinous buildings;
- (d) the prohibition of the storage of more than a fixed quantity of petroleum or kerosine in any building;
- (e) the regulation or prohibition of any description of traffic; and with the previous sanction of the district magistrate—
- (f) the regulation of slaughter houses;
- (g) the prohibition for reasons of public health of the use of any place for the sale of meat in default of a licence granted by the committee or otherwise than in accordance with the conditions of the licence;
- (h) the fixing of the conditions subject to which, the circumstances in which, and the areas of localities in respect of which, licences for the sale of meat may be granted, refused, suspended or withdrawn.

27. Sanitation and other orders.—The committee by general or special order in writing may provide, and if so advised by the district medical officer of health shall provide as advised, for all or any of the following matters within the town area:

- (a) the protection from pollution, and periodical examination of all sources of water used for drinking purposes;
- (b) the prohibition of the removal or use for drinking purposes of any water from any stream, well, tank or other source where such removal or

use causes, or is likely to cause, disease or injury to health, and the prevention of such removal or use by the filling in of any well, tank or other receptacle or by any other method that may be considered advisable;

- (c) the prohibition of the deposit or storage of manure, refuse or other offensive matter in a manner prejudicial to the public health, comfort or convenience;
- (d) the excavation of earth and the filling up of all excavations and depressions injurious to health or offensive to the neighbourhood;
- (e) the removal of noxious vegetation;
- (f) the disposal or destruction of materials likely to convey infection;
- (g) the registration of births and deaths;
- (h) the condemnation and destruction of food which is unfit for human consumption;
- (i) the prohibition for reasons of public health of the use of any place for the sale of fish, fruit, vegetables or sweetmeats in default of a license granted by the committee or otherwise than in accordance with the conditions of the licence;
- (j) the fixing of the conditions subject to which and the circumstances in which and the areas of localities in respect of which licences for the sale of fish, fruit, vegetables or sweetmeats may be granted, refused, suspended or withdrawn;
- (k) the training and registration of midwives;
- (l) any other measures which may be necessary generally for the conservancy of the town.

28. Publication of sanitation orders.—A copy of every order issued under section 26 or section 27 shall be posted in some conspicuous place within the town area.

29. Appeal against a sanitation order.—(1) An order of the committee under sections 26 and 27 shall be final when not appealed against and shall not be called in question in any court.

(2) An appeal shall lie to prescribed authority or if none is appointed the district magistrate against any order passed by a committee under sections 26 and 27.

(3) Every appeal under this section shall be instituted within thirty days from the date when the order appealed against was published or was notified to the person concerned.

(4) The decision of prescribed authority or if none is appointed the district magistrate in appeal shall be final and shall not be called in question in any court.

30. Naming of streets and numbering of houses.—The committee may cause a name to be given to any street and affixed in such place or places as it may think fit, and may also cause a number to be affixed to every house in any street or muhalla, for the purpose of identifying such house.

CHAPTER V.—OFFENCES

31. Breach of any sanitation order.—Any person guilty of a breach of an order under section 26 or section 27 shall be liable upon conviction to a fine which may extend to ten rupees, and when the breach is a continuous breach with a further fine which may extend to two rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

32. Removal of names and numbers affixed to streets and houses.—Any person who wilfully removes, obliterates or destroys any name or number affixed by the committee under section 30 or encroaches upon a public road within the limits of the town area which is maintained by the committee under section 23(d) shall be liable, upon conviction, to a fine which may extend to twenty rupees.

32-A. Molestation or obstruction of town area servant, employee or contractor or employee of such contractor.—Whoever obstructs or molests any person employed by or engaged by the committee to do any act, or any contractor under contract with a committee to perform any act required or permitted by this Act, or any agent, servant or labourer of such contractor in the performance of such act or in

doing anything in the execution of such contract, shall be liable on conviction to a fine which may extend to Rs. 20

33. Jurisdiction of courts to try offences.—Offences under this Act shall be triable by any magistrate within whose jurisdiction any such offence may have been committed

CHAPTER VI—SUPPLEMENTAL PROVISIONS

34. Application of town fund when area ceases to be a town area.—When by reason of the cancellation under clause (d) of section 3 of an order under clause (a) of the said section any area ceases to be a town area, the unexpended proceeds of any tax levied therein shall be applied for the benefit of the inhabitants of the said area as the Chief Commissioner may think fit

35. Power of district magistrate to assume the function of a Committee.—If any committee refuses or omits to perform any prescribed duty, the district magistrate may perform such duty, and any assessment made or revised or any other thing done by the prescribed authority or if none is appointed the district magistrate in the exercise of the power conferred by this section may be enforced as if it had been made, revised or done by the committee

36. Power to supersede Committee in case of persistent default or abuse of powers.—(1) If, in the opinion of the Chief Commissioner, a committee persistently makes default in the performance of the duties imposed on it by or under this or any other Act for the time being in force, or exceeds or abuses its powers, the Chief Commissioner may, by an order published, with the reasons for making it, in the official gazette, declare that committee to be in default, or to have exceeded or abused its powers, and supersede it for a period not exceeding two years to be specified in the order

(2) When a committee is so superseded, the following consequences shall ensue—

- (a) all members of the committee shall as from the date of the order vacate their offices as such members,
- (b) all powers and duties of the committee may, during the period of supersession, be exercised and performed by the prescribed authority or if none is appointed the district magistrate,
- (c) on the expiration of the period of supersession specified in the order the committee shall be reconstituted, and the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for being members

37. Power of Chief Commissioner to confer on Committee the powers of the district magistrate.—The provincial Government may, by notification in the official gazette, confer or impose on any committee established under this Act all or any of the powers conferred or duties imposed by the Act or by rules made thereunder on prescribed authority or if none is appointed the district magistrate, and in like manner may divest any committee of any power conferred or duly imposed under this section

38. Power of Provincial Government to make rules.—(1) The Chief Commissioner may make rules applicable to all or any town areas for carrying out the purposes of this Act

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1) of this section, such rules may relate to all or any of the following matters or be for all or any of the following purposes

- (a) to regulate and control the powers conferred by this Act or by any rule made under this section on any servant of the Government or on the committee,
- (b) to prescribe for any such officer or for the committee, any duty in addition to those prescribed by this Act;
- (c) to prescribe or regulate in respect of all or any town areas the number of members to compose the committee established therein,
- (d) as to the method of filling casual vacancies,
- (e) as to the qualifications of electors and of candidates for election to the committee, as to the registration of such electors, as to the nominations of such candidates as to the time of election and mode of recording votes, as to the method of settling disputes or questions arising from elections, and generally for regulating all elections under this Act

- (f) as to the custody of the town fund;
 - (g) as to the form in which any accounts are to be kept or any registers maintained;
 - (h) as to the proportions in which the town fund shall be expended, and as to the preparation of estimates of income and expenditure;
 - (i) as to the preparation of plans and estimates for works of construction involving expenditure from a town fund, and as to the authorities by whom, and the conditions subject to which, such plans and estimates may be sanctioned;
 - (j) as to the returns, statements and reports to be submitted by the committee;
 - (k) to regulate the imposition, assessment and collection of any tax imposed under this Act, and to prevent the evasion of the same;
 - (l) as to the exemption from taxation of any person or class of persons or property or description of property;
 - (ll) the limitations, restrictions and rate subject to which the circumstances and property tax shall be levied under section 14;
 - (m) not traceable;
 - (mm) any other matter relating to taxes in respect of which this Act makes insufficient provision and further provision is, in the opinion of the State Government, necessary.
- (3) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

38A. Power of district magistrate to prohibit execution of resolution or order.—

(1) The prescribed authority or if none is appointed, the district magistrate may, within the limits of his district, by order in writing, prohibit the execution or further execution of a decision, resolution or order passed or made under this Act or under rules framed under this Act by a town area committee or any officer or servant of a committee if in his opinion such decision, resolution or order is of a nature to cause or tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed, or danger to human life, health or safety or a riot or affray, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such decision, resolution or order.

(2) A copy of such order, with a statement of the reasons for making it, shall forthwith be forwarded by the district magistrate to the Chief Commissioner, who may thereupon if he thinks fit, rescind or modify the order.

(3) Where the execution or further execution of a decision, resolution or order is prohibited by an order made under sub-section (1) and continuing in force, it shall be the duty of the committee, if so required by the authority making the order under the said sub-section, to take any action which is necessary for preventing any person from doing or continuing to do anything in pursuance of or under cover of the said decision, resolution or order.

NOTE.—The word "injury" used in this section means physical injury and not losses of financial or any other nature."

39. Savings.—Notifications published, local limits defined, taxes imposed, assessments, revisions and appointments made, lists prepared, powers conferred, duties assigned and exemptions granted under the "Bhopal State Notified Areas Act," 1946 (XII of 1946)", shall, so far as they are consistent with this Act, have the same force and effect as if they had been respectively published, defined, imposed, made, prepared, conferred and granted under this Act and by the authority empowered thereby in such behalf:

Provided that the term of office of a committee appointed under the former Act shall not by reason of this section be extended beyond one year from date of appointment.

40. References in other enactments to the Bengal Chaukidari Act, 1856.—In every enactment passed before this Act comes into force in which reference is made to, or to any section of the "Bhopal State Notified Areas Act, 1946 (XII of 1946)", such reference shall, so far as may be practicable, be deemed to be made to this Act or to its corresponding section

[No. 261-J.]

A. N. SACHDEV, Under Secy.

MINISTRY OF FINANCE
(Department of Economic Affairs)

INSURANCE

New Delhi, the 5th December 1951

S.R.O. 1991.—In exercise of the powers conferred by the Explanation to section 64-O of the Insurance Act, 1938 (IV of 1938), and in supersession of the notification of the Government of India in the Ministry of Finance, No. 122-IE (1)/50-F, dated the 9th May 1951, the Central Government hereby specifies that for the purposes of sections 64-O, 64-P and 64-Q of the said Act the following insurers carrying on general insurance business in the States shall not be deemed to be included amongst insurers carrying on general insurance business, namely:—

1. All India Motor Transport Mutual Insurance Company Limited, Poona-2.
2. Investment, Trustee and Insurance Corporation Limited, Belgaum.
3. Motor Owners' Mutual Insurance Company Limited, Belgaum.
4. Millowners' Mutual Insurance Association Limited, Bombay.
5. Motor and General Insurance Company Limited, Calcutta.
6. Northern India Transporters Insurance Company Limited, Jullundur City.
7. Premier Life and General Insurance Company Limited, Madras.
8. Vanguard Fire and General Insurance Company Limited, Madras.
9. Vanguard Insurance Company Limited, Madras.
10. National Employers' Mutual General Insurance Association Limited, Bombay.
11. The Northern India Motor Owners' Mutual Insurance Company Limited, Ambala Cantt.

[No. 105-IF (8)/51.]

B. K. KAUL, Dy. Secy.

New Delhi, the 7th December 1951

S.R.O. 1992.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (X of 1949), and on the recommendation of the Reserve Bank of India, the Central Government hereby declares that the provisions of sub-section (2) of section 19 of the said Act shall not, until the 1st April 1953, apply to the National Bank of Lahore Ltd., Delhi in respect of the shares held by it in the New Bank of India Ltd.

[No. 4(260)-FI/51.]

S. K. SEN, Dy. Secy.

MINISTRY OF FINANCE (COMMUNICATIONS)

New Delhi, the 7th December 1951

S.R.O. 1993.—The President hereby directs that the following further amendments shall be made in the Post Office Insurance Fund Rules, namely:—

In the said Rules—

1. In rule 19—

(a) Except as otherwise provided, for the words "Civil Surgeon" wherever they occur the words "medical officer" shall be substituted,

(b) for the words, from 'The Principal Officer will then forward the 'proposal' to 'space provided for the purpose' the following shall be substituted, namely:—

"The Principal District Officer will then forward the proposal with the certified document referred to in the two preceding rules, in a registered envelope, to the medical officer concerned as indicated below:—

(i) for insurance upto Rs. 1,000.—A medical licentiate employed in a Government or municipal dispensary nearest to the place of duty of the proposer.

(ii) for insurance upto Rs. 2,000.—A medical graduate employed in a Government or municipal dispensary nearest to the place of duty of the proposer.

(iii) for insurance above Rs. 2,000.—Civil Surgeon of the District.

and request the medical officer to examine the proposer, to record his opinion regarding the proposer's age and health in the place provided for the purpose in the form of proposal and, if the proposer is not able to sign his name, to obtain an impression of the left thumb of the proposer, otherwise the signature of the proposer below the declaration on the form in the space provided for the purpose."

(c) for note 2 the following shall be substituted, namely:—

"Note 2.—Medical examination of proposers for an insurance above Rs. 2,000 must be made by the Civil Surgeon or such other gazetted medical officer as may be designated for the purpose. The medical examination of proposers serving with Indian Missions abroad will be conducted by the Government of India Medical Officers attached to such Missions. At places where such medical officers are not stationed the medical examination will be done through the Doctors authorised by the Government of India to treat India-based staff. In very exceptional cases the Postmaster General may relax the rule."

2. For the note 1 below rule 21, the following shall be substituted, namely:—

"Note 1.—The Medical Officers concerned will receive a fee for each medical examination at the following rates:—

(i) Civil Surgeon or such other gazetted medical officer as may be designated for the purpose, or medical officers attached to Indian Missions abroad.—Rs. 4.

(ii) Medical graduates in Government or Municipal employ.—Rs. 3

(iii) Medical licentiate in Government or Municipal employ.—Rs. 2.

[No. D.8971-C.I/51.]

R. NARAYANASWAMI, Joint Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 27th November 1951

S.R.O. 1994.—The following draft of a further amendment to the Indian Income-tax Rules, 1922 which the Central Board of Revenue proposes to make in exercise of the powers conferred by sub-section (1) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922), is published as required by sub-section (4) of the said section for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st December 1951.

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the said Board.

Draft Amendment

For rule 36 of the said Rules, the following rule shall be substituted, namely:—

"36. An application for a refund of tax under section 48 of the Act shall be made in the following form:—

APPLICATION FOR REFUND OF INCOME-TAX/SUPER-TAX

I of (address) do hereby state that my total income and total world income (See note 2) computed in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922) during the year ending on being the previous year for the assessment for the year ending on the 31st March 19 .., amounted to Rs. and Rs. respectively, that the total income-tax and super-tax chargeable in respect of such total income is Rs. and that the total amount of income-tax and super-tax paid, or treated as paid under sub-section (5) of section 18, is Rs.

I therefore pray for a refund of Rs.

Signature.

*resident and ordinary resident

I hereby declare that I am resident but not ordinary resident in the
not resident

taxable territories and that what is stated in this application is correct.

Dated 19 _____ Signature.

Note 1.—The application should be accompanied by a return of total income and total world income in the prescribed form.

Note 2.—Non-resident persons who elected to be assessed on the basis of their total world income should state the amount of such income in the space provided. Others should leave it blank.

Note 3.—Where the application is made in respect of interest in securities or dividends from companies, the application should be accompanied by the certificate prescribed under Section 18(9) or Section 20, as the case may be.

Note 4.—The application for a refund should be made to the Income-tax Officer for the district in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly to income-tax, to the Income-tax Officer for the district in which the applicant ordinarily resides.

Note 5.—A non-resident person should make his application for refund:—

- | | |
|---|---|
| (1) If the total income is made up of income wholly taxed at source or dividends or both. | To the I.T.O. Non-resident Refunds Circle, Bombay. |
| (2) If any part of the income is derived from horse racing. | To the I. T. O. 'A' Ward, Poona. |
| (3) If assessed through statutory agent. | To the I.T.O. who has jurisdiction over the statutory agent. |
| (4) Any other non-resident person. | To the Income-tax Officer of the Circle in which the greater part of the income arises. |

Note 6.—The application may be presented by the applicant in person or through a duly authorised agent or may be sent by post.

* Delete whichever description is inappropriate.

2. Rule 36-A shall be omitted.

[No. 123.]

S. P. LAHIRI, Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 8th December 1951

S.R.O. 1995.—In exercise of the powers conferred by clause (b) of section 4 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government is pleased to direct that the power to make orders under clause (d) of sub-section (2) of section 3 of the said Act shall, in relation to the use of Iron and Steel in the construction of buildings, be exercisable also by the Government of Mysore.

[No. SC(A)-4(20).]

N. R. REDDY, Under Secy.

ORDER

New Delhi, the 7th December 1951

S.R.O. 1996.—In exercise of the powers conferred by sections 4 and 13 of the Supply and Prices of Goods Act, 1950 (LXX of 1950), the Central Government is pleased to direct the firm of Messrs. Industrial Importers and Engineers (India)

Ltd., 49-Stephen House, 4 Dalhousie Square, Calcutta, to sell their consignment of fifty tons of Light Soda Ash imported from the U.S.A. per S.S. City of Perth on the 9th November 1951 to Messrs. Shewbuxrai Onkarmull, 26 Burtolla Street, Calcutta, provided that the selling price does not exceed the landed cost by more than ten per cent.

[No. PC-7(17)/51.]

C R. NATESAN, Dy. Secy.

MINISTRY OF COMMUNICATIONS

(POSTS AND TELEGRAPHS)

New Delhi, the 11th December 1951

S.R.O. 1997.—In exercise of the powers conferred by the Indian Post Office Act, 1898 (VI of 1898), the Central Government hereby directs that the following further amendments shall be made in the Indian Post Office Rules, 1933, namely:—

In rule 183 of the said Rules after clause (ec) the following clause shall be inserted, namely.

“(ff) The Director, Central Coconut Research Station, Kasargod and Joint Director, Central Coconut Research Station, Kayangulam, provided that the articles posted by them relate solely to the business of the said Research Stations”.

[No. C-28-11/50.]

K. V. VENKATACHALAM, Dy. Secy.

MINISTRY OF REHABILITATION*New Delhi, the 3rd December 1951*

S.R.O. 1998.—In supersession of the Gazette Notification No. 32(13)/AE/51, dated the 13th August 1951 and in exercise of the powers conferred by Section 4 of the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), the Central Government is pleased to direct that the Chief Claims Commissioner, Claims Commissioners and Deputy Chief Claims Commissioner shall exercise jurisdiction as revising authority over the Claims Officers specified in Col. 3 of the Schedule.

SCHEDULE

Sr. No.	Name of the revising authority	Jurisdiction
1.	Chief Claims Commissioner. (H. Qs. at Delhi)	1. All Industrial Claims Officers 2. All Claims Officers exclusively dealing with properties of one lakh and over and all other Claims Officers when dealing with cases in which the value claimed exceeds one lakh.
2.	Shri J. K. Khanna. (H. Qs. at Delhi)	1. All Claims Officers linked to N.W.F.P. excluding those linked to agricultural land. 2. All Claims Officers linked to Multan, Gujranwala and Mianwali districts in Punjab (P).

Sr. No.	Name of the revising authority	Jurisdiction
3.	Shri L. R. Sikand. (H. Qs. at Jullundur)	1. All Claims Officers linked Sheikhupura, Lyallpur, Gujranwala, Lahore excluding Lahore city and Cantt. and Sialkot (including Shakargarh) districts in Punjab (P).
4.	Shri S. P. Advani. (H. Qs. at Jaipur)	1. All Claims Officers linked to Sind except those posted at Bombay and Kalyan.
5.	Shri R. K. Vaish. (H. Qs. at Delhi)	1. All Officers linked to Baluchistan. 2. All Officers linked to Montgomery, D. G. Khan, Jhelum and Jhang districts in Punjab (P). 3. All Officers linked to Bahawalpur State except those dealing with agricultural land claims.
6.	Shri T. C. Aggarwal. (H. Qs. at Delhi)	1. All Claims Officers linked to agricultural land claims in Bahawalpur State and N.W.F.P. 2. All Claims Officers linked to Campbellpore district in Punjab (P). 3. All Claims Officers working with the Central Organisation.
7.	Shri I. M. Lall. (H. Qs. at Delhi) I.C.S.	1. All Officers linked to Sind and posted at Bombay and Kalyan. 2. All Officers linked to Lahore city and cantt. and Rawalpindi, Muzaffargarh, and Sargodha districts in Punjab (P). 3. All other officers not specifically provided otherwise.

[No. 32(13)AE/51.]

SAVITRI PRASADA, Dy. Secy.

MINISTRY OF LABOUR*New Delhi, the 8th December 1951*

S.R.O. 1999.—*Corrigendum.*—In the Government of India Ministry of Labour Notification No. S.R.O. 1586, published at pages 1845 to 1856 of Part II, Section 3, of the *Gazette of India*, dated the 13th October, 1951,

(i) for the words "THE SCHEDULE" before the title "THE CALCUTTA DOCK WORKERS (REGULATION OF EMPLOYMENT) SCHEME 1951" read "THE SCHEME"; and

(ii) for the words "A worker's card" in clause 19, read "A worker's cards".

[No. Fac.74(1).]

P. S. EASWARAN, Under Secy.

New Delhi, the 6th December 1951

S.R.O. 2000.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad in the matter of an application under Section 33A of the said Act.

CENTRAL GOVERNMENT'S INDUSTRIAL TRIBUNAL AT DHANBAD

PRESENT:

Shri S. P. Varma, B.A., Barrister-at-Law, *Chairman*.

PARTIES:

The Bombay Port Trust

AND

Its Employees.

APPEARANCES:

For the Management:

Mr. Sam Dinsha Nariman, B.A., LL.B., Legal Adviser, Assisted by Mr. R. P. Vazifdar, Senior Assistant Engineer, Bombay Port Trust.

For the Union:

Shri S. J. Deshmukh, Organizing Secretary, Bombay Port Trust Employees' Union.

Application filed by the Union, alleging action of the management in contravention of provisions of sections 24 and 33 of the Industrial Disputes Act, in Reference No. 17 of 1951.

ORDER

This is an application dated 9th October, 1951, filed by the Union complaining against the infringement of section 33 by the management. The subject of their allegation is that 18 crane drivers have been demoted to the post of Nowganis on and from 19th October, 1951, and 20 Mazdoors were also retrenched from the 19th October, 1951. Although they have not mentioned the section under which they have applied, it is presumably under section 33A of the Industrial Disputes Act. The list of names forms Annexure 'A' of the application and it is said that they were working in the Hydraulic establishment, Princes and Victoria Docks.

I have seen the service cards of the 18 crane drivers mentioned in the application. It appears that they were engaged as Crane drivers when work was heavy on the distinct understanding that they would revert to their original posts when the work was finished. Under these circumstances I do not see how the matter comes either under section 33 or 33A of the Industrial Disputes Act. It was not a case of discharge, dismissal nor of punishment.

With regard to the Mazdoors it has been pointed out that they were engaged distinctly on the understanding that their appointments were temporary ones and that their services could be terminated on 24 hours' notice. Some documents have been shown to me where their signatures or thumb impressions were found under the terms of engagement. I may mention one thing more. In the original application by the Union, Annexure 'A' does not mention the names of the fifth man and the twentieth man.

I am afraid on the materials no action is called for against the Bombay Port Trust as prayed for by the union.

S. P. VARMA, *Chairman*,
Central Government's Industrial Tribunal, Dhanbad.

DHANBAD,

Dated the 28th November, 1951.

[No. I.R-2(305).]

S. NEELAKANTAM, Dy. Secy.

New Delhi, the 8th December 1951

S.R.O. 2001.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of

the Industrial Tribunal at Calcutta in the matter of an industrial dispute between the Bank Line (India) Ltd., Calcutta and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, GURUSADAY ROAD, BALLYGUNGE CALCUTTA-19.

Reference No. 5 of 1951

Before Shri K. S. Campbell-Puri, B.A., LL.B. Chairman.

PARTIES:

The Bank Line (India) Ltd., Calcutta

AND

Their workmen.

Appearances:

Shri B. K. Chowdhury, Advocate, with Shri Sudarshan Chatterjee, General Secretary, Shipping Employees Union, Calcutta.

Shri S. K. Mullick of Messrs Sandersons & Morgans, Solicitors, with Mr. D. G. Gale, Marine Superintendent, for Bank Line (India) Ltd.

AWARD

By Notification No. LR-3(158), dated the 2nd May 1951, the Central Government in the Ministry of Labour referred an industrial dispute between the Bank Line (India) Ltd., Calcutta and their workmen in respect of the matters specified in the Schedule annexed thereto, for adjudication. The Schedule reads as follows:

SCHEDULE

1. Whether the Bank Line Ltd. were justified in refusing to increase the emoluments of their tally clerks by Rs. 1/4/-, unlike the Stevedores and certain other Shipping Companies who have granted similar increase to their staff consequent upon the recent agreement between the Master Stevedores' Association and the Dock Mazdoor Union. If not, whether they should pay this to their tally clerks.
2. Whether the Bank Line Ltd. is justified in withdrawing the practice of tallying of bulk wheat by their own tally clerks and in refusing to allow such work as delivery and wagon tallying etc. which had hitherto been done by those tally clerks. If not, whether these elements of their normal work should be restored to the tally clerks.

The copy of the aforesaid Notification was received on the 7th May 1951 and notice was issued to the parties for filing their written statements and on the completion of the pleadings the parties were called to a preliminary sitting for 21st September 1951. The parties took some time to file their list of documents and that of the witnesses to be examined and ultimately the case came up for full hearing on the 12th November 1951 and the hearing continued from day to day and came to close on the 17th November 1951.

For the proper appreciation of the facts and circumstances which led to the dispute and its genesis, it would be necessary to state the previous history of the dispute in brief as disclosed from the evidence recorded in the case:

Bank Line Ltd. is engaged in the work of shipping and they used to employ tally clerks for tallying the bulk wheat brought in ships at the port of Calcutta as well as other cargo for the purpose of marking and for their satisfaction that the cargo received was intact. The tally clerks are employed day to day depending upon the number of vessels in port and the amount of work available. At the time of actual work the attendance of the workers is inserted in a book by giving the names of the tally clerks and this entry continue during the stay of the ship in port. The Bank Line (India) Ltd. has also a permanent office where about a dozen clerks work on permanent basis and as such the lot of the tally clerks apparently is not at par with those of the permanent clerks working in the office. Several other Shipping Companies have also been doing this work in Calcutta ports and the workers have organized themselves into more than one Unions but there is nothing on the record to show as to when the tally clerks of the Bank Line (India) Ltd. organized themselves in the form of a Union or went on the rolls of the Shipping Employees Union, which has now taken up their cause so far this dispute is concerned. It was in the year 1947 when the grievances of the dock labour came into prominence on account of strike of Dock workers and the Calcutta Dockers Union joined issue with the employers organized under an Association-styled "Master Stevedores' Association". The Regional Labour Commissioner, Calcutta, was approached and on discussion with the representatives of the employers and the employees, the employers agreed to comply with certain demands embodied

in a letter dated 4th February 1947 (Ex. C) addressed to the President, Calcutta Dockers Union, from the Assistant Secretary, Master Stevedores' Association wherein some of the demands of the Calcutta Dockers Union were conceded and an increase of Rs. 2 in Dearness Allowance per chance was agreed upon. It appears that the ferment of agitation did not touch the tally clerks working with the Bank Line Ltd. in the year 1947. But some trouble arose in the year 1948, when as denoted from the statement of the Regional Labour Commissioner, who was examined on behalf of the Union, a letter from the office of the Regional Labour Commissioner, dated 20th August 1948 (not brought on record) was sent to the Marine Superintendent, Bank Line (India) Ltd. This was acknowledged by reply dated 24th August 1948 (Ex. D) by the Marine Superintendent. It appears that the Bank Line (India) Ltd. did not see eye to eye with the Regional Labour Commissioner and some more correspondence appears to have been made in this connection which concluded by the reply of the Bank Line (India) Ltd. (Ex. E), received by the Regional Labour Commissioner's Office. This letter (Ex. E), is dated 9th September 1948 and it does not directly touch the question of increase in Dearness Allowance and it was only stated that the work of tallying cargo was a straightforward simple matter and there was no victimization whatsoever and that these men were not only employed on Bank Line vessels but also by other lines. At this stage of the negotiation in the year 1948 a fresh demand was made by the Shipping Employees Union and more vigorously in the form of 'Charter of Demands' dated 15th December 1948, wherein beside the Dearness Allowance several other demands were made which do not form the subject of this Reference. The conciliation proceedings followed soon after and the Regional Labour Commissioner sent a letter, dated 17th January 1949, to the Marine Superintendent, Bank Line (India) Ltd. (Ex. F), wherein it was stated that at the time of the last strike in the docks the payment of a minimum guaranteed wages to Tally Clerks and others was accepted by the Master Stevedores' Association and Shipping Sub-Committee and that a copy of the representation was enclosed for ready reference. No reply, however, was forthcoming from the Bank Line and in continuation of the correspondence as stated by the Regional Labour Commissioner in his deposition two more letters, dated 12th April 1949 (Ex. G) and 23rd May 1949 (Ex. H), were exchanged between the Marine Superintendent, Bank Line (India) Ltd. and the Regional Labour Commissioner. The evidence brought on the record shows that conciliation work did not materialize and the negotiations fell through. Meanwhile the Shipping Employees Union again made a demand regarding increase in Dearness Allowance and another Charter of Demand, dated 18th December 1950 (Ex. J) was submitted directly to the Bank Line (India) Ltd. and on the intervention of the Regional Labour Commissioner conciliation proceedings between Dock Mazdoor Union a recognised body and the Master Stevedores' Association resulted in the increase of Re. 1/4/- per head per chance from 15th January 1951. In these conciliation proceedings, as revealed from the evidence, all shipping interests were represented by a Shipping Sub-Committee of the Bengal Chamber of Commerce. The Regional Labour Commissioner addressed a letter, dated the 23rd February 1951, to the General Secretary, Shipping Employees Union (Ex. K), the present applicant in this case, wherein it was stated that the demands put forward by the Shipping Employees Union were duly taken up with the Master Stevedores' Association and the shipping interests concerned, who have since informed him that they are at present not prepared to recognise the Shipping Employees Union as they have already recognised two Unions whose membership was also open to all the categories of staff whom the Shipping Employees Union claim to represent and under these circumstances recognition of the third Union was not only unnecessary but would lead to confusion and difficulty. It was further mentioned in this letter (Ex. K) that the employers, were prepared to extend as an interim measure, the concessions recently granted to the ordinary stevedoring labour viz. increase in Dearness Allowance and overtime allowance till the demands will be met with by the decasualization scheme which was likely to be introduced shortly. This naturally gave rise to the demand for the increase of Re. 1/4/- in the Dearness Allowance to the tally clerks working with the Bank Line (India) Ltd. and they pressed for it.

Now their case put succinctly is that in the conciliation proceedings all shipping interests were directly concerned and were represented through the Shipping Sub-Committee and as such all shipping interests including Bank Line were bound to abide by the agreement arrived at and that the Bank Line (India) Ltd. was not justified in refusing to give effect to this agreement by not making an increase of Re. 1/4/- in the Dearness Allowance. It was further alleged that on the refusal of the Bank Line (India) Ltd. to implement the terms of the agreement by making an increase of Re. 1/4/- per chance per head the employees went on two hours pen-down strike in order to give vent to their grievances, but the employers instead of appreciating the grievance of the employees retaliated and abolished the tallying

system altogether so far the tallying of bulk wheat was concerned and transferred the work of tallying to Messrs. S. C. Banerjee & Sons, Ltd., Stevedores, so far the tallying of other cargo in the shape of packages etc. was concerned, with the result that the clerks about 95 in number were thrown out of employment who had been working in the Bank Line (India) Ltd. for the last several years.

On the other hand the employer's case is that Bank Line (India) Ltd. is not a member of the Shipping Sub-Committee of the Bengal Chamber of Commerce — they were not a party to the conciliation proceedings which ensued between — Dock Mazdoor Union and the Master Stevedores' Union and as such the so-called agreement was not binding upon them. It was further stated that for the purpose of standardization they, however, made an increase of As. -/5/- in the emoluments of their workers bringing the rate to Rs. 6/5/- per day and Rs. 7/5/- per night per chance in conformity with the other shipping interests. In this connection it was explained that the tally clerks and other employees of the Bank Line (India) Ltd. were being paid higher wages as compared with other shipping interests previously. In regard to the second issue, the position taken up by the Company was that the tally clerks went on strike, created good deal of trouble and assaulted one of the officers of the Company for which they were prosecuted and the Company had to consider seriously with regard to the tallying work. That in view of the fact that tallying of bulk wheat was not provided in the Charter Party, it was under misapprehension that the Company had already been tallying with it for their own satisfaction, and the practice was therefore abolished altogether and the work of tallying other cargo was made over to Messrs. S. C. Banerjee & Sons Ltd., Stevedores, who took the responsibility of all accidents to their labour under Workmen's Compensation Act. Lastly it was asserted that the Company was within their rights to do so as it was a management affair and the employees could not have any say in the matter.

The Union examined three witnesses besides the Regional Labour Commissioner (Central) in support of their claim while Shri N. C. Mukherjee, Cargo Supervisor, Mr. D. G. Gale, Marine Superintendent and Mr. L. M. Belcombe, Director, Turner Morrison & Co., came into the witness box on behalf of the Company. Both sides also relied upon various documents which were duly exhibited in support of their respective pleas. Shri S. K. Mullick, the learned Counsel for the Company, however, raised a preliminary objection which relates to the invalidity of the Reference and as such must necessarily be disposed of at the outset before embarking upon the merits of the case.

The objection precisely is that the tally clerks had ceased to be the workers of the Company at the time of the Reference and as such the Reference was invalid. It was argued that as they had been discharged earlier to the Reference, they do not satisfy the definition of 'workman' under the Industrial Disputes Act. It was further stressed that the claim was filed by the Shipping Employees Union, who are not the workers of the Company and furthermore that the tally clerks were daily rated workers and the Company used to employ them as casual labour and as such the reference is not competent because there is no dispute between the Company and its permanent staff. Reliance was placed on the following legal precedents by Shri S. K. Mullick:

- (1) Calcutta High Court decision in the application of the proprietor of Weekly Notes Printing Works Vs. one M.B., a Lino Operator of the Printing Works (Reported in Vol. LV No. 12—1950—page 256 of the Calcutta Weekly Notes).
- (2) Victoria Cotton Mills Vs. Their Workers (Reported in Labour Law Journal May 1951, page 502).
- (3) Calcutta Electric Supply Corporation Ltd. and their workmen represented by the Calcutta Electric Supply Corporation Workers Union (Calcutta Gazette, 19th April 1951, page 869).
- (4) All India Industrial Tribunal (Bank Disputes) (Para 156, Page 68).

(Award)

Shri B. K. Chowdhury for the Union in reply to the preliminary objection only urged that the cases cited by the opposite side were not in point and rather helped the Union's view viz. that the discharged employees satisfy the definition of workman as laid down in Section 2(s) of the Act.

Section 2(s) reads as follows:

Section 2(s).—"Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes for the purposes of any proceedings under this Act in relation to an industrial dispute,

a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown.

On the examination of the authorities relied upon on behalf of the Company it appears that the argument is rather confused because more than one points have been huddled together. The plain question posed for discussion is as to whether the workmen already discharged from service could fall within the definition of 'workmen' when an industrial dispute has arisen. It appears that incidentally another point has also been bracketed *viz.* that each worker was an individual worker and as such it was an individual dispute and not an industrial dispute as contemplated under the Act. Yet another point has also been intertwined namely that the tally clerks constitute casual labour and as such no industrial dispute between the tally clerks and the Company was involved. Although as stated above the argument appears to be an involved one if not confused yet it may well be considered from all standpoints. In regard to the nature of service of the tally clerks which more or less depends upon facts even if it may be presumed that they constituted casual labour and were not the permanent employees of the Company, it is not disputed that a majority of them if not all have been working for a pretty long time extending over several years; and the Company as admitted by their Counsel also called upon Messrs. S. C. Banerjee and Co., Stevedores, to whom a part of the work has been entrusted, to absorb them. It follows that in the concern as Bank Line (India) Ltd. is, although express terms of contract of employment did not exist yet the workmen were at the beck and call of the Company whenever required to do so and were paid certain uniform wages and as such they had an implied right of warranty for service to be provided to them when no ship was in port. This may be correct that they were not paid during the playing off period but as the Union pleaded they could not do any other work as they were always on the look out when a new ship was coming. In these circumstances it seems clear to me that although the tally clerks were not employed on a permanent basis which fact has been admitted by the Union in their statement of claim *vide* paras. 3 and 7 of the written statement also and from the Charter of Demands para 1 yet the Company had some implied lien on them and every time the same workers were employed when a ship was in port. It would be strange if not idle to argue that the Company had no lien upon those workers and on the close of every day they were no longer the employees of the Company. If this had been so the Company would not have participated in the conciliation proceedings which ensued on their strike. It goes without saying that the Company wanted them to work on their own conditions and the position was not like this that the tally clerks working with the Bank Line (India) Ltd. were persons with whom the Company was not at all concerned and as the Company was recruiting new workers everytime when a ship was to be unloaded and the cargo was to be tallied. I am, therefore, of the opinion that notwithstanding of this fact that the tally clerks were not employed on a permanent basis, there was a group of tally clerks who used to work with the Bank Line (India) Ltd. and as such in all fairness the legal principle of implied warranty could be invoked in their case as to what the parties intended in the course of employment. The other aspect of the question on the basis of which certain authorities were cited as stated above was that each worker was an individual worker and the dispute was not an industrial dispute. Before dilating upon the legal aspect and the authorities cited, I may only say that when all tally clerks 90 or 95 in number went on strike and certain negotiations followed it would be fair to conclude that the demand was for collective bargaining and as such it was not the case of any one individual or all of them as individual cases as urged by the Company. The controversy regarding industrial dispute and individual dispute arises only on the point of jurisdiction and not that the reference is invalid. Even on the matter of jurisdiction it is now settled that when the dispute of an individual workman is taken up by a workers Union or a substantial body of workmen espouse the cause it would amount to an industrial dispute. The basic authority of Madras High Court in which Mr. Justice Mack made some pertinent observations in this respect is the authority in point and Shri Mullick while relying upon a decision of the Calcutta High Court in the Calcutta Weekly Notes case (Reported in Vol. LV. No. 12 1950-51 of CWN-p.256) must be relying upon the Madras High Court decision also which was followed in the said case. Justice Mitter in the Calcutta Weekly Notes case also agreed with the views of Mack J. of Madras High Court as to the interpretation put on the term 'Industrial Dispute'. This authority accordingly is of no avail to the Company wherein it was definitely held that when the dispute of any individual is taken by any one of the Unions or the case is espoused by other workers it amounts to an 'industrial dispute.' Applying this principle on the facts of this case as explained above it is a dispute between the employer on the one hand and the entire body of the tally clerks who have been affected by the change and

alteration made in the method of work on the other and it would be quite reasonable to presume that the dispute is an industrial dispute and satisfies the definition under 2(k) of the Act. The other authority relied upon *viz.* Victoria Cotton Mills Vs. Their Workers (1 LLJ 1951 page 502) deals with Section 33 application and is obviously not in point. Shri Mullick drew my attention to certain observations made at pages 505 and 507 of this decision but on the perusal of the discussion I find that these observations relate to the strikes and lockouts and as to whether it amounted to the alteration of the conditions of service as contemplated under Section 33. This case related to the breach of the provisions of Section 33 and clearly has no bearing on the facts of this case. Reference was also made to the case of Calcutta Electric Supply Corporation Ltd. and their workmen reported in Calcutta Gazette 19th April 1951 page 869 in general. This case stands on different footing and has no bearing with the preliminary objection raised by the learned Counsel. It deals with specific issues of fact *viz.* revision of scales of wages, bonus, promotion etc. and is not in point. Lastly, the learned Counsel for the Company referred me to the observations of their lordships of the All India Industrial Tribunal (Bank Disputes which has since been declared invalid by the Supreme Court). Shri Mullick referred to para. 156 (page 68) of the All India Industrial Tribunal (Bank Disputes) award and I have considered it as an argument but again I find that this reference is also not in point. In this paragraph the Tribunal remarked that in case better scales of pay than those laid down by the award were enforced the award would not supersede such scales and in their place those now prescribed in their stead unless of course that it be the necessary legal consequence for the operation of such a provision. It was further observed that it must be understood that the pay scales and Dearness Allowance laid down here together form a combined scheme and no employee shall be held entitled to justify the old scale and the new scale of Dearness Allowance. This appears to have been cited in support of the argument advanced in Issue No. (1) *i.e.* increase in the Dearness Allowance and has manifestly no bearing on the preliminary objection regarding the invalidity of the reference. The authority cited accordingly is not appropriate and it is regrettable that much time should have been spent in dealing with the salvaged observations made here and there and not confining the argument to a precise objection. What I could gather however from the argument is that the contention of the employer in this respect was that the employees having been discharged and not being in service of the Company could not raise an industrial dispute. In other words 'whether a discharged employee' falls within the definition of workman as laid down in Section 2(s) of the Act or not. In this respect the controversy has since been set at rest and the point hardly requires any serious attention, as the definition of industrial dispute is intimately connected with the definition of workman which is given in Section 2(s) of the Act, and the words 'a workman discharged' is also mentioned.

It is significant to note that when a workman is discharged by an employer for some reason or other and his discharge or dismissal is taken up by a body of workers it would amount to industrial dispute. The reason is not far to see that one of the elements of an industrial dispute is that it is a dispute between the employers and the workmen connected with the employment or non-employment of any person and when a certain discharge or dismissal leads to a dispute between the employer and the dismissed or discharged person it obviously relates to the non-employment of the worker discharged whose cause has been taken up by a body of workers or Union. The definition of industrial dispute formed the subject of discussion in 'Indian Paper Pulp Co. Ltd. Vs. Indian Paper Pulp Workers Association' decided by Chief Justice Harris and Chakraborty J. of the Calcutta High Court and I cannot do better.

The learned Chief Justice observed as follows:

"If the discharge caused the dispute then obviously the dispute has not arisen until the moment or after the discharge. Had there been any dispute before these workers were discharged it might be that we should have to give effect to the contention of the Company's Counsel. But it is clear that the case for the workmen is that there was a long standing dispute between the workers and the workmen before these workmen were discharged. That being so the Tribunal might well hold on the fact that there was an industrial dispute which would give a jurisdiction to make an award."

Justice Chakraborty was of the opinion that even though there may not be a pre-existing dispute culminating in dismissal a dispute relating to such dismissal could be deemed to be an industrial dispute. In arriving at this conclusion Justice Chakraborty referred to an English case of *Rex. Vs. The National*

Arbitration Tribunal—Horatio Crowther and Co. Ltd. and opined that there was no difficulty in holding under the wider definition in India that even where a dismissal has occurred without any previous dispute, there could be an industrial dispute about such dismissal. The learned judges of the Federal Court in the 'Western India Automobile Association' case also held that when an employer dismisses a man or declines to employ him this matter raises a dispute as to the non-employment. The definition of 'workman' under Section 2(s) moreover hardly admits of any serious controversy as said above on the matter when the wording "a workman discharged during that dispute" forms a part of the definition. The emphasis is more to the word 'dispute' than to 'discharge', and dispute if taken after the dismissal when the reference is made would obviously lead to absurdity; because a dispute virtually arises when a certain employee is charged with certain accusation and is dismissed or discharged and not when he is actually dismissed. In case any discharged employee does not fall within the ambit of the definition of 'workman' it would mean that he has no remedy in the Industrial Disputes Act against the employer which apparently is against the very concept of the Act. I am therefore of the considered opinion that a discharged employee satisfies the definition of workman and when his case is espoused by a body of workers the dispute amounts to industrial dispute. Furthermore in the particular merits of this case the objection is wholly untenable inasmuch as the Bank Line (India) Ltd. were a party to the conciliation proceedings and the whole dispute arose on strike of the workers which resulted in the prosecution of some of them. The dispute was taken up collectively and in case as found above that the tally clerks were virtually the employees and had legal implied warranty on the service with the Bank Line (India) Ltd. it was futile to say that the Reference was invalid. Their Lordships of the Labour Appellate Tribunal recently in one of their decisions in Kanpur Chemical Works Vs. Shri Ram Kishore (reported in Labour Law Journal November 1951) while replying to the contention which was raised before them that the reference made by the Government was invalid observed as follows:

"The order made by Government states that the dispute which was being referred to the Tribunal was a dispute between the company and Ram Kishore but at the same time that dispute is described therein as an 'industrial dispute.' To us it seems that the use of these words suggests that the Government had materials before it from which it could conclude that the dismissal of Ram Kishore was taken up by the Union and was made what is usually termed a "collective dispute" between it and the company. That appears to be clear from the notice of reference of this dispute having been given to the labour union and the written statement being filed and other steps in the proceeding taken by the secretary of the union..... In our opinion, therefore, the dispute that was referred to was an industrial dispute. The second contention on behalf of the company, therefore, fails."

In this case under adjudication, the facts are much more stronger. In the first place the Company was admittedly a party to the conciliation proceedings although they stated that Capt. Chalmers, their representative represented them and not the Shipping Sub-Committee of the Bengal Chamber of Commerce, and Tally Clerks were represented by the Shipping Employees Union and the points of issue in the reference were admittedly referred to after the report of the Regional Labour Commissioner. In these circumstances the objection is manifestly devoid of any merit and should not detain me any more. The same is repelled.

Coming to the merits of the case now there are two specific issues which have been reproduced at the very outset. As I read the first issue I see that the demand is primarily based upon the agreement between the Master Stevedores' Association and the Dock Mazdoor Union whereby an increase in the emoluments of tally clerks by Re. 1/4/- was made, and that the Bank Line (India) Ltd. unlike the Stevedores and certain other Shipping Companies did not see their way to grant similar increase to their staff. The issue precisely is as to whether the Bank Line (India) Ltd. were justified in refusing to give the aforesaid increment and if not whether they should pay this to their tally clerks. I would divide the issue into two parts for the purpose of elucidation: (1) whether the Bank Line (India) Ltd. was justified in refusing the increment; and (2) whether they should pay this to their tally clerks. The second part, I may say, is not very clear as to whether the payment, if first part goes against the Company, should be made retrospectively or henceforward after the award is made. The use of the words 'their tally clerks' again presents some difficulty inasmuch they are no longer in their service and their service was not on permanent basis. Furthermore the names of all the tally clerks are again not on the record and the nature of the work as explained in the prefatory note was such that one cannot say as to who

worked for which period and on which ship and furthermore who have been absorbed by Messrs. S. C. Banerjee, Stevedores and who are still out of employment. At any rate the issue as it stands when put to test and scrutiny in the light of the evidence brought on the record presents some difficulty because the Shipping Employees Union who have now taken up the cause of the Tally Clerks were not directly party to the agreement upon which the demand is based. The evidence brought on the record in this respect by both sides comprises over the statement of some witnesses of whom the statement of Mr. A. Talib, Regional Labour Commissioner is of great value. As stated above the dispute between the tally clerks and the Company originated in the beginning of 1947 when the Calcutta Dockers Union entered into an agreement with the Master Stevedores' Association regarding their emoluments and other demands and succeeded in getting Rs. 2 Dearness Allowance per chance. It so happened that some trouble arose in those days over the dismissal of some tally clerks working under Bank Line (India) Ltd. in the year 1948 and the Regional Labour Commissioner took up the matter with the employer and the dispute which actually arose on the dismissal of certain tally clerks embraced other demands and a charter of demands dated 15th December 1948 was submitted. This conciliation work however did not materialize and things went on in an indifferent manner. The climax, however, reached when another charter of demand was submitted dated 18th December 1950 by the Shipping Employees Union (Ex. J) and the Dock Mazdoor Union made a demand for the increase in Dearness Allowance from the Master Stevedores' Association. Both these matters were taken up and an agreement was arrived at between the Dock Labour Union and the Master Stevedores' Union in December 1950. The question for determination is whether this is binding upon the Bank Line (India) Ltd., the respondent in this case. The principal argument advanced in this connection was that the Bank Line (India) Ltd. was represented through the Shipping Sub-Committee of which the Bank Line (India) Ltd. was a member. On the other hand the stand taken up by the employer is that they were not a member of the Shipping Sub-Committee and they were represented directly by Capt. Chalmers, then the then Marine Superintendent. Mr. Gale, one of the Directors of Bank Line and the present Marine Superintendent of Bank Line (India) Ltd. has categorically denied that Bank Line Ltd. is a member of the Shipping Sub-Committee and that Mr. L. W. Balcombe, representative of Turner Morrison & Co., who was a member of the Shipping Sub-Committee, was not representing them in those negotiations. Mr. Balcombe was also examined as a witness and deposed as under on this crucial point:

"I am a member of the Shipping Sub-Committee of the Bengal Chamber of Commerce. The Bank Line (India) Ltd. is not a member of the Bengal Chamber of Commerce nor a member of the Shipping Sub-Committee. Shipping Sub-Committee is a body of individuals appointed by the Bengal Chamber of Commerce with shipping experience from their member firms to advise them on shipping matters connected with the port. The members of the Committee have no authority to commit their firms in any way and they merely make suggestions for consideration, confirmation or rejection by Chamber or its member firms. I am aware that there was an agreement between the Calcutta Dockers Union and Master Stevedores Association in 1947. Again in 1951 there was an agreement between Master Stevedores Association and the Dock Mazdoor Union. Shipping Sub-Committee was not a party to any of the aforesaid agreements. At the 1951 meeting all steamer Agents were fully represented and endorsed a proposal from the Master Stevedores Association to increase the Dearness Allowance. This endorsement was required by members of the Master Stevedores Association since it entailed an additional expenditure by their members which they had to recoup from their liner principals represented by their steamer agents."

Mr. Balcombe in cross-examination further stated that no report or any suggestion was submitted to the respective firms by the Shipping Sub-Committee since it was referred to various conferences. Of course the conclusions and results arrived at in those conferences were communicated to the respective firms. He further states "In my capacity as Agent I would keep the Bank Line informed on all matters that might be of interest to them." The deposition of Mr. Gale in this respect may also be reproduced to have the full picture of Company's stand and this reads as follows:

"We have no concern with the Bengal Chamber of Commerce. We sent our Marine Superintendent as our representative on behalf of Bank Line (India) Ltd. before the Conciliation Officer. I know Mr. Balkom, one of the Directors of Messrs. Turner Morrison & Co. Messrs. Turner Morrison & Co. are not Managing Agents of Bank Line (India) Ltd. Of course Turner Morrison & Co. are Agents for Bank Line (London).

Ltd and they do not work on behalf of Bank Line (India) Ltd except for the purpose of drawing money from Turner Morrison & Co when it is required. The money that we draw from Turner Morrison & Co is reimbursed by Bank Line (London). Some of the disbursements are made on behalf of Bank Line (London) Ltd. Turner Morrison is a member of the Bengal Chamber of Commerce and I understand that Mr Balkom is a member of the Shipping Sub-Committee. I cannot say whom he represents. This is correct that a member of Tally Clerks were being employed on daily wages at intervals for a number of years. The daily wagers are paid at a flat rate and to my knowledge they are not paid anything as Dearness Allowance. There is not exactly a dispute in regard to the increase of DA but it is in regard to the increase of emoluments. Of course the question of DA was discussed in the proceedings. I am not personally aware as to whether the question of Dearness Allowance was discussed with the Company prior to proceeding but the record would show that I have looked into the record but not in this respect. From a copy of the charter of demands I find that DA was one of the demands. This is correct that conciliation proceedings ensued in regard to this demand also. In the course of all the conciliation proceedings Bank Line (India) Ltd was represented by Capt Chalmer the then Marine Superintendent. The Officer when he represents any organization as a procedure shall have to send a report to the Company. I have read some correspondence between Capt Chalmer and the Conciliation Officer, which is on the record. I have been in the Company's service for the last 20 years and in 1948 I was in Calcutta. The Bank Line (India) Ltd have been paying more to their Tally Clerks as compared with other Companies up till December 1950. There was general demand for the increase of DA last year."

The position visualized in the statement of both these officers of the Company leaves no manner of doubt that Bank Line (India) Ltd though may not have been a member of the Shipping Sub-Committee was aware as to what happened during the conciliation proceedings between the Dock Mazdoor Union and the shipping interests represented by the Shipping Sub Committee. The Bank Line (India) Ltd furthermore is admittedly an associate branch of Bank Line (London) Ltd and as such their connection with Messrs Turner Morrison & Co through Mr Balcombe, a member of the Shipping Sub Committee cannot be treated a casual one. Mr Balcombe was present throughout the Tribunal proceedings and was also examined as a witness. On the reading of the statements of both these witnesses together, this much can be safely deduced that the Bank Line (India) Ltd was much too aware as to what agreement was being made between the Union and the shipping interest. In these circumstances, it is difficult to hold that the Bank Line (India) Ltd sheer on account of not being a member of the Shipping Sub-Committee could remain aloof from other shipping interests. Mr A Talib Regional Labour Commissioner, in this respect was very frank when he stated that by the use of the words shipping interest (in Ex H) he meant Bank Line (India) Ltd as well. He further deposed in cross-examination as follows

"The conciliation which was made by me and concluded successfully in 1950 was between the Masters Stevedores Association, Dock Mazdoor Union and the Government. On the representation of the Shipping Employees Union and my letter to the General Secretary of the Union (Ex K) I did not proceed further because I was informed by the employers that they were prepared to extend as interim measure the concessions recently granted to the ordinary stevedoring labour. The increase viz. Re 1/4/- in DA per shift per chance was not mentioned in (Ex K) but it was mentioned in the agreement arrived at between the Master Stevedores Association and Dock Mazdoor Union. A copy of that agreement was not sent to the Shipping Employees Union but they were all the time present when the agreement was arrived at inasmuch as they were also a party to the agreement."

Mr Talib furthermore in examination-in-chief definitely stated that he was aware that Bank Line (India) Ltd was a member of the Shipping Sub Committee of the Bengal Chambers of Commerce and that the Shipping Sub-Committee represented the Bank Line (India) Ltd also. On this particular point the statement of the Regional Labour Commissioner and Mr Gale is conflicting no doubt but as said above the broad view that I take of the matter is that the Bank Line (India) Ltd even if it was not a member of the Shipping Sub-Committee was duly represented

by the shipping interests and the presence of Mr. Balcombe in the negotiations furnish sufficient guarantee for their representation. Mr Talib in his cross-examination however had to admit that there was nothing on the record to show that Shipping Sub-Committee was representing Bank Line (India) Ltd. but he knew from personal knowledge that the Committee represented Bank Line (India) Ltd. The witness on another question deposed that he did not agree that the Shipping Sub-Committee was not representing the Bank Line (India) Ltd. Be that as it may, while taking the broad view of the whole matter it seems clear to me that so far the representation was concerned the Bank Line (India) Ltd. was duly represented and the participation of Mr. Balcombe in the negotiation proceedings furnish a sufficient guarantee of their representation. Judged in this light it is not necessary to elaborate the point further that the agreement arrived at between the Dock Labour Union and the Master Stevedores' Association in which all other shipping interests were also represented including the Bank Line (India) Ltd., was also binding upon the Bank Line (India) Ltd. I am fortified in this view by the conduct of the Bank Line Ltd. also that they actually made an increase of As. -/5/- in the emoluments of the tally clerks and rather got the adjustment made from the date the agreement was signed viz. 15th January 1951 as evidenced from (Ex. 3), a statement giving the difference of increased rate of As. -/5/- per head per chance from 15th January 1951 to 25th March 1951 before the strike. This document was filed by the Company in support of the averment that they had actually made an increase of As. -/5/- from January 1951 and that it was wrong to say that the Company was paying Rs. 6 and Rs. 7 respectively per day and night. This evidence however in the determination of the point on the aforesaid furnishes a data that the agreement was acted upon by making some addition if not all. The date of 15th January 1951 is more significant. This was the date, which according to the agreement was the date from which increment of Re. 1/4/- was to be made and all shipping interests gave effect to that. If Bank Line (India) Ltd. was not a party to the agreement and had nothing to do with the agreement, it was not obligatory upon them to make an increment of As. -/5/- and more especially from 15th January 1951. It was argued on their behalf that they made an increment for the purpose of standardization but if they wanted only to conform with the rate of wages with other Companies they could do it from any other date and it was not necessary to adhere to the date of the agreement. It is abundantly clear that Bank Line (India) Ltd. also agreed to the terms of the agreement but as they had been paying higher wages unlike others they did not like to make an increment of Re. 1/4/- according to the terms of the agreement. Now it is not in controversy that the Bank Line (India) Ltd. was paying higher wages to their tally clerks as compared with other shipping interests, and the learned Counsel for the Company on the strength of this fact strenuously urged that it does not stand to reason why the Bank Line (India) Ltd. should pay more to their employees than other shipping interests. The argument appears to be plausible but does not bear scrutiny for the simple reason that in case this argument prevails it would mean that it was not reasonable for the Company to have paid previously higher wages as compared with others. It is a truism that satisfied labour is an index of benevolent administration and when the Bank Line (India) Ltd. was paying more to their employees previously I see no reason why they should grudge now. Furthermore they were a party to the conciliation proceedings and if they had a mind to make an increase of As. -/5/- only and not Re. 1/4/-, an exception should have been made to the rule in their case with a proviso in the agreement itself. The increase according to the terms of the agreement was the amount of Re. 1/4/- per head per chance and I do not think that it is open to anyone of the shipping interests to modify the terms of its own accord unilaterally. Either they have to abide or not. Without incurring the risk of repetition I would say that they agreed to make an increment from 15th January 1951 but they chose to make an increase of -/5/- annas only instead of Re. 1/4/- which gave rise to the dispute. I have given my anxious consideration to the plea of the Company in the matter of increase but I have not been able to persuade myself to fall in line with their view point. My finding accordingly is that the Company was not justified in refusing to increase the emoluments of their tally clerks by Re. 1/4/- unlike the Stevedores and certain other Shipping Companies who have granted similar increase to their staff consequent upon the recent agreement between the Master Stevedores' Association and the Dock Mazdoor Union.

This brings me to the other part of the issue: whether they should pay this to their tally clerks. The tally clerks have already been discharged and they are no longer in service of the Bank Line (India) Ltd. The tallying of bulk wheat has been altogether abolished and the tallying of other cargo has been entrusted to Messrs. S. C. Banerjee & Company Stevedores with a recommendation that they should absorb the tally clerks of the Company as far as possible. Messrs. S. C.

Banerjee & Co., Stevedores, were not made a party in this reference and there is nothing on the record to show as to who and how many Tally Clerks have been working with them. It is of course in evidence that the majority of the tally clerks who are working with the Bank Line (India) Ltd. previously, have been taken by the said Stevedores. But, in the absence of any data as to who they are and at which vessel they have worked and the period of their work it is impossible to call upon Messrs. S. C. Banerjee & Co., Stevedores, with whom they have been working since March 1951, to pay them at the rate of Re. 1/4/- per chance per head according to the terms of the agreement. It can be contended that Messrs. S. C. Banerjee & Co., Stevedores, are the men of the Company and virtually it is the Company with whom they are working; but this argument will be fallacious when considered in the light of the agreement between Messrs. S. C. Banerjee & Co. and Bank Line (India) Ltd. (Ex. X-1). Messrs. S. C. Banerjee & Co. had been working as stevedores of Bank Line (India) Ltd. since long but the tallying work had been entrusted to them only in March 1951, when the Bank Line (India) Ltd. thought of making over the tallying work of inward and outward cargo to Messrs. S. C. Banerjee & Co., Stevedores, and approached them by letter dated 28th March 1951 (Ex. X-1/1), the operative part of which is reproduced for facility of reference.

Ex. X-1—1.—“We have on previous occasions discussed with you the question of taking over the tallying of cargo in Bank Line vessels, and of course, there is a clause in your Contract covering this item, which is work commonly undertaken by Stevedoring Firms.

We write to inquire whether you are prepared to take over the tallying of Inward and Outward cargo on our vessels as from this date.

It would be appreciated, and indeed it would be essential, that you should absorb into this work as many of the casual clerks formerly employed by us as it is possible for you to do.”

Mr. Gale, Marine Superintendent, when recalled as Court witness, deposed that no written reply was received to the aforesaid letter and the matter was verbally discussed and Messrs. S. C. Banerjee & Co., Stevedores, actually took over the work as evidenced from their accounts (Ex. X-1/2 and 3). This documentary evidence clearly indicates that Messrs. S. C. Banerjee & Co. took over the work of tallying on a certain specified payment as borne out by their accounts and it is difficult to call upon the Stevedores, who is not a party to these proceedings, to make an increase in the wages of the tally clerks working with him by way of adjustment from March, 1951 upto now. The result is that on the second part of the issue so far the period from March 1951 till now is concerned, the employer cannot be called upon to pay to their tally clerks at the increased rate retrospectively, which relief was again neither put in the Issue nor pressed in the course of arguments. The employer however shall have to pay to the tally clerks henceforward in the light of the finding given on Issue No. 2 at the increased rate of Rs. 7/4/- per day and Rs. 8/4/- per night per shift per head. Awarded accordingly.

Issue No. (2): This issue relates to the withdrawing of the practice of tallying bulk wheat by the tally clerks of the Bank Line (India) Ltd. as well as in refusing to allow them such work as delivery and wagon tallying etc, which has hitherto been done by them. This issue like Issue No. 1 is also divided into two parts, and the second part is ‘as to whether the aforesaid elements of their normal work should be restored to their tally clerks. The stand taken up by the Company on this issue is that so far the tallying of bulk wheat was concerned they have abolished it altogether because this part of work was being performed under certain misapprehension. It was argued that it was not obligatory on the Bank Line to tally the bulk wheat in terms of the Charter Party. It was emphasised that there was no such clause in the charter party under whose conditions and stipulations the cargo brought in vessel was to be discharged. Mr. Gale explaining the procedure and giving the reasons for the abolition of tallying bulk wheat deposed as under:

“We do not tally bulk wheat ships. There is no clause in the charter party demanding us for tallying bulk wheat ships. The other reason is that in case we tally the Port Commissioners do not accept the figures given by the Tally Clerks. The Government would not also accept the tallying figures. The Bank Line (India) Ltd. was tallying bulk wheat ships before. The procedure adopted were that Tally Clerks were employed for the work and they used to count the bags which were filled by the labour and the number of bags discharged in sling load were recorded by the Tally Clerks. The cargo was then landed in the custody of Port Commissioner. This procedure has since been

discontinued from March 1951. Now the bags are filled by labour employed by Stevedores and discharged on to the wharfs in the Port Commissioners custody. The counting and marking of bags is not known to me as by whom it is done. I am also not aware as to by whom the cost of filling these bags is paid now. Of course the system of tallying continues so far other goods are concerned excepting bulk wheat. That tallying is now being done by our Stevedores. So far I know ——— no other Company is tallying bulk wheat."

The position taken up by the Company as explained in Mr. Gale's statement needs no further comment and the point for determination only is as to whether the Company was justified in departing from the previous practice which has affected the lot of the tally clerks. The Union case was that the Company on account of the pen-down strike and the collective demands of the tally clerks with regard to the increase in wages according to the agreement arrived at between the Dock Mazdoor Union and the Master Stevedores' Association retaliated and discontinued the work of tallying bulk wheat and made over the tallying of other cargo to their Stevedores M/s. S. C. Banerjee & Co. It was maintained that the conduct of the Company amounted to bad labour practice and the change in the prevailing system was made designedly to punish the tally clerks and as such the change was made *mala fide*. Now on the examination of the evidence brought on the record—documentary as well as oral, some of the dates of the correspondence between the Regional Labour Commissioner and the Bank Line (India) Ltd. are significant and will be helpful in the appreciation of the stand taken by both sides. The relevant correspondence started in the year 1948 when the Regional Labour Commissioner wrote to the Marine Superintendent under letter No. Con.-6(2)/4, dated 20th August 1948 on the subject and the Marine Superintendent replied on 24th August 1948 (Ex. D). This is the first document in this connection which throws lurid light on the intention of the Company with regard to the tallying work. The last paragraph of Ex. D reads as follows:

"We would like to add that recently we have had so much trouble with Tally Clerks that we are seriously considering placing our tallying elsewhere."

"The statement is much too clear and leaves no manner of doubt that the management instead of meeting with the demands of the tally clerks was contemplating to stop the tallying work or to make some other arrangement to get rid of them. This observation of the Marine Superintendent, frank as it is, would also show that the management was not satisfied with the conduct of the tally clerks presumably on account of the strike. But the mental outlook of one or the other is not the main factor for resolving disputes. It is rather the dispassionate thinking and give and take method which is always required to resolve the difficulty that comes in the way of actual working of commercial or industrial concerns. Ex. E is another letter of the Marine Superintendent addressed to the Regional Labour Commissioner in reply to his letter of 8th September 1948 wherein it was denied that the Bank Line (India) Ltd. was victimizing their employees and that they had no vessels discharging cargo therefore they could not employ the tally clerks at the moment. Some more correspondence might have been exchanged but that has not been brought on the record and what I can gather from the statements of the witnesses examined in the case is that the trouble arose in the year 1949 on the question of wages as disclosed above and ultimately when the agreement was arrived at between the Dock Mazdoor Union and the Master Stevedores Association in which all shipping interests and shipping employees Unions participated in December 1950, the agitation came to a climax and the pen-down strike of two hours gave an indication of further brewing trouble. It was at this critical period that Bank Line (India) Ltd. discontinued the tallying of bulk wheat which as evidenced from Ex. D referred to above, they had been contemplating since long. The tallying of other cargo was also made over to Messrs. S. C. Banerjee & Co. Stevedores. It follows that the discontinuance of tallying bulk wheat work and the making over of the delivery and wagon tallying work to the Stevedores synchronized with the incident of strike and the agitation made by the tally clerks for collective bargaining in regard to the increase in their wages. The result of the discontinuance was that those who were asking for an increase in wages rather had to go out of employment so far one part of the work was concerned and so far the other part they were put under the charge of a stevedore and not to bother the Bank Line (India) Ltd. any more. But here comes the rule in the way of the employer because the basis of 'hiring and firing' upon which it appears they had been working, no longer exists and with the introduction of labour legislation both sides have been brought under various restrictive measures in their own interest, and as such the capital and labour

must go hand in hand in harmony and co-operation to bring about the desired result. Coming to the facts I was saying that the coincidence of discontinuance and the strike was not purely an accident, and when taken as such it leads to the only conclusion that Bank Line (India) Ltd. felt ill at ease of everyday agitation which had started somewhere in 1948 and discontinued the tallying work. With this conclusion the finding naturally would be that the Bank Line (India) Ltd. was not justified in withdrawing the practice and refusing to allow such work as delivery and wagon tallying etc. which has hitherto been done by these tally clerks.

But coming to brass tacks for the relief claimed in second part of the issue my finding again is a mixed one viz. that the discontinuance of tallying of bulk wheat shall have to be considered on its own merits while that of the tallying of other cargo will be decided on its own merits in consideration of all the facts and circumstances brought on the record. Now in regard to the tallying of bulk wheat the stand taken up by the Company as stated above is that work was being done under certain misapprehension and it was not obligatory upon them under the Charter Party or otherwise to continue the same. It was also maintained that no other company is doing this work and it was only for their satisfaction that they had taken up themselves this extra work. So far the charter party conditions and stipulations are concerned it is admitted that tallying of bulk wheat does not fall in the conditions specified therein. The Union however brought on the record two charter parties and tried to show that notwithstanding of the fact that there is no clause for tallying bulk wheat the Company continued tallying the bulk wheat in the case of more than one vessels. But this kind of evidence is of no avail when the Company admits that they had been tallying under certain misapprehension. The position exactly is, as explained in the statement of Mr. Gale, that when vessel comes in port the Port Commissioner's labour takes charge of it and so far the filling of the wheat in bags is concerned it was done by the labour and is being done by the labour. The function of the tally clerks was only to mark the bags which work has now been straightaway given to the Port Commissioners. In this connection Shri Mullick, the learned Counsel for the Company, argued that discontinuance is a purely management function and does not form the subject of dispute. It was further contended that the change in the system of tallying bulk wheat was not to injure the cause of the employees but it was rather in the rectification of a certain system which was not adopted by any other Company and that the employer had a right to discharge or close any work whenever they choose to do. Reliance was placed on the case 'Aluminium Corporation of India Ltd. and Their Workmen (Labour Law Journal—November 1950—p. 1140) wherein it was held that it is for the employer to decide whether a particular activity is profitable or not and that it is not possible to compel an employer for a Tribunal to carry on an undertaking that is not profitable.' The legal precedents generally are made on particular merits of each case and the principle that I would rather adopt would be that when unnecessary labour is eliminated which was not obligatory upon the employer to maintain, that would rather give the change a shape of rationalization which virtually means the elimination of unnecessary labour. In this case the bulk wheat is to go to the Port Commissioner and when the Port Commissioner is prepared to accept the delivery in the manner now adopted and the change rather does away with the objection which was sometime raised with regard to the acceptance of figures, the change in the ultimate analysis would be taken as one for the better. This is correct that the discontinuance of the tallying bulk wheat has affected the lot of the tally clerks, but so long as it is not proved that the method was quite essential and not superfluous as urged by the Company it would not be fair to mulct the employer with more expense sheer to meet the demand of the tally clerks or to call upon the employer to continue a certain unessential work for adding to the earnings of employees. I am therefore not impressed with the reasoning advanced by the Union side that whatever was in force, the same must continue for all times to come and my finding is that the element of tallying bulk wheat need not be restored to the tally clerks. The tallying of other cargo which work has now been entrusted to Messrs. S. C. Banerjee & Co., Stevedores, however, stands on a different footing. This work continues and the Company has no case to bring forward that it is not essential for them to tally the cargo consisting of packages, wagons and all other kinds of cargo but the change they have brought was in order to avoid the provisions of Workmen's Compensation Act and some bother which the tally clerks put them to by agitation. I have examined the position and weighed the argument of both sides and I have no hesitation in coming to the conclusion that the attitude adopted by the employer was to get rid of their tally clerks who had been working with them although as a casual labour for decades together. Human sympathy for those who worked for anyone for long should demand otherwise. In these days

when agitation has become the order of the day in the preservation of one's right so far it is legitimate, the same cannot be roughshod by discontinuing the method with the object of punishing the employees. This kind of attitude without elaborating the argument further, is also, clearly repugnant to the labour legislation and cannot be encouraged. The Stevedores is another word used for contractors and recruitment of labour through Stevedores or contractor has always been fraught with serious evils. The one outstanding evil is that a middleman intervenes and makes money at the cost of the labour and no improvement can be made in their lot. The other aspect of Stevedores or contractors labour is that the difficulties of labour are rather intensified because the security of service with a contractor must suffer as compared with a well-established employer. Employment of labour by contractors has been the subject of good deal of investigation and has been much criticized by the Royal Commission in their report as well as the Labour Investigation Committee of the Government of India. But I have no mind to dilate upon the subject as I am afraid it would be pedantic to elaborate the discussion which has been so thoroughly and ably gone into by various Commissions and Committees. I would rather content myself to say that the contract system wherever it is possible should be discontinued, instead of that it should be brought into existence, as it is done in this case. The Bank Line (India) Ltd. appears to have put the gear reverse which as an adjudicator I cannot support keeping in view of the dictum laid down on the subject by various Commissions if not exactly by the Government of India. The mere fact that the management in their anxiety to get rid of the tally clerks and to avoid the penalty of Workmen's Compensation Act thought of handing over the work to Stevedores with regard to the delivery and wagon tallying rather indicates that the employer was not serious to consider the demands of the employees in order to ameliorate their conditions of service. The impression left on my mind on going through the evidence on this question rather is that Bank Line (India) Ltd. in order to parry the terms of the agreement by which an increase of Re. 1/4/- was to be made over and above the higher wages that they were paying as compared with the shipping interests; made over the tallying work to Stevedores and thereby made a short shrift of the agitation. For all these reasons I am of the considered opinion that so far the element of tallying other cargo excepting bulk wheat, the normal work should be restored to the tally clerks from January 1952 or within one month from the date of the publication of the award whichever falls later. The reason for fixing a specified time for the restoration of the work is that Messrs. S. C. Banerjee & Company, Stevedores, have already taken contract from the Bank Line (India) Ltd. which contract according to the statement of Mr. Gale, Marine Superintendent, is revised year by year. In other words the contract already assigned to Messrs. S. C. Banerjee & Co., Stevedores, expires at the close of the year 1951 i.e. by 31st December 1951. Bank Line (India) Ltd. is accordingly directed not to renew the contract and restore the elements of their normal work as delivery and wagon tallying etc. (except bulk wheat tallying as held above) from 1st January 1952 on an increased rate of Rs. 7/4/- per shift per head during the day and Rs. 8/4/- per shift per head during the night according to the findings given on both these issues.

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN TERMS AFORESAID, THIS THE 26TH DAY OF NOVEMBER 1951.

K. S. CAMPBELL-PURI, *Chairman*.

Central Government Industrial Tribunal, Calcutta.

[No. LR-3(158).]

S.R.O. 2002.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal at Calcutta in the matter of an application under Section 33A of the Industrial Disputes Act, 1947

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-19

Before Shri K. S. Campbell-Puri, B.A., LL.B., *Chairman*.

Reference No. 5 of 1951.

BANK LINE (INDIA) LTD., CALCUTTA

In the matter of an application under Section 33-A of the Industrial Disputes Act, (as amended), dated 7th July, 1951, preferred by Shri Sudarshan

Chatterjee, General Secretary, Shipping Employees Union, 38, Hemchandra Street, Calcutta.

Appearances:

Shri B. K. Chowdhury, Counsel, for the Shipping Employees Union.

Shri S. K. Mullick of M/s. Sandersons & Morgans with Mr. D. G. Gale, Marine Superintendent, for Bank Line (India) Ltd., Calcutta.

AWARD

The General Secretary, Shipping Employees Union, 38, Hemchandra Street, Calcutta, made a petition dated 7th July 1951, under Section 33-A of the Industrial Disputes Act and complained that the Employer, Messrs. Bank Line (India) Ltd. have made an alteration in the conditions of service during the pendency of the proceedings in Reference No. 5 of 1951—Bank Line (India) Ltd. and their workmen. The complaint comprises over 7 (seven) items mentioned in paragraph 2 of the petition under clauses (A) to (G) of which six items relate to specific grievances while the seventh item is one of general character. Shri B. K. Chowdhury, the learned Counsel for the Union, did not press items (A) and (E) pertaining to the case of Shri Prosanto Sarkar and deduction of Dingi hire respectively. The seventh item relating to general grievances was also dropped with the result that the hearing of the application was confined to four points mentioned under Clauses (B), (C), (D) and (F).

Regarding Para. 2(B) the grievance of the Union is that eight of the employees viz.

(1) K. L. Chakravarty

(3) P. N. Roy

(5) C. K. Dey

(7) S. K. Bhattacharya

(2) D. N. Mitra

(4) K. L. Mondal

(6) B. K. Dutta

(8) A. T. Roychowdhury

have not been absorbed after calling of the strike and that the employers have violated the provisions of Section 33 in this respect. The learned Counsel arguing on behalf of the Union proceeded that a criminal case was launched against these persons and the same has since been disposed off by the Hony. Magistrate, 1st class, Alipore and all have been discharged. Reliance was placed on a copy of the order of the Magistrate (Ex. A) and it was submitted that the Company be directed to absorb them in their work. The Complaint was resisted on behalf of the Company and Shri Mullick, the learned Counsel for the Company, urged that these employees had been discharged from service before the date of the Reference and the provisions of Section 33 cannot be attracted. The argument precisely was that the cause of action arose earlier to the proceedings in the Reference and the application under Section 33-A was untenable in law and fact. So far the facts are concerned it is not disputed that the employees mentioned above had gone on strike along with others in April 1951. The Reference was made in May 1951 and the contention of the Company is that the change in the conditions of service was not made during the pendency of the proceedings in Reference No. 5 of 1951; (Bank Line (India) Ltd. and their workmen). It was next urged that these persons had assaulted an officer of the Company and were prosecuted by the police; and that although they have been acquitted from the charge yet on the departmental side the Company could not afford to take them back in service. The main objection, however, was that the cause of action arose earlier and the provisions of Section 33 do not apply.

Now on the premises given above it is quite clear that these employees were not dismissed or discharged during the pendency of the proceedings and what happened was that all went on strike and after calling of the strike as the tallying system was abolished some of them only have been absorbed with the Stevedores to whom a part of the work has been entrusted while these persons have not yet been able to find any employment. However hard it may look, it seems clear to me that their grievance if any, could form a part of the issues referred to for adjudication in the original reference No. 5 of 1951 if it had been seriously pressed or agitated during the conciliation proceedings before Regional Labour Commissioner but it is wrong to say that after the reference was made and thereafter during the pendency of the proceedings any change or alteration has been made in the conditions of their service. They were not discharged or dismissed during the pendency of the proceedings which under Clause '3' Section 20 of the Act commences from the date of the reference of a dispute for adjudication and as such the complaint is misconceived. The same must fail and is disallowed.

Regarding Item 2(C): The grievance was that the employer had abolished certain posts without having obtained the permission under Section 33 during the pendency of the proceedings; and consequently those who held those jobs have

suffered on account of the abolition of those posts and the relief asked for was for reviving those posts already existing before abolition. It was argued that in consequence of the abolition of posts lesser number of men are to handle the work and they are over-worked. The Company joined issue on this point also and Shri Mullick on their behalf contended that these posts have been abolished as the tallying system has been abolished. It was further maintained that the cause of action arose in April 1951 when the tallying system was abolished and move under Section 33 was untenable. The argument given above, while dealing with item 2(C) prevails in this item also and need not be repeated. Posts moreover have not been specified in the application and the matter has been complained of in a vague indefinite manner and as such does not admit of any relief. The same stands rejected.

Regarding Item 2(D): The Union case was that the post of Boat Inspector was abolished during the pendency of proceedings i.e. in June 1951 with the result that Shri S. C. Bose, erstwhile Boat Inspector, has been made a tally clerk now. The reply of the Company to this grievance was that no difference has occasioned in the emoluments of Shri S. C. Bose and the post of Boat Inspector had to be abolished because the tallying work was abolished. Shri Chowdhury, the learned Counsel for the Union frankly admitted that Shri Bose was drawing the same emoluments which he used to draw as Boat Inspector. In the circumstances the case does not fall within the purview of Section 33 and this grievance should also fail. The same is disallowed.

Regarding Item 2(F): The complaint was that a cut of Rs. 1/6/- and As. -/6/- was made in the emoluments of Assistant Clerks and Boat Inspectors respectively when the work has been entrusted to Stevedores. It was stated that the cause of action arose on 7th June 1951 during the pendency of the proceedings and provisions of Section 33 have been violated in effecting the reduction in emoluments. Shri Mullick while reiterating the same arguments emphasised that this deduction has been made by the Stevedores and not by the Company. It was stressed that the work of tallying cargo has been entrusted to Messrs. S. C. Banerjee & Co., Stevedores, and the Assistant clerks and Boat Inspectors referred to in the complaint are in his employment and not in the employment of Bank Line (India) Ltd.

Now, in the adjudication of the original reference this question has been gone into and in the light of the finding given therein, these employees are now in the service of Messrs. S. C. Banerjee, Stevedores, who are working on the basis of a certain contract made with the Company. Messrs. S. C. Banerjee & Co. were not a party to this Reference and in these circumstances it is difficult to interfere in the service conditions of Stevedores Employees. The grievance is thus incompetent and the same is disallowed.

The net result is that the application under Section 33-A fails and the award is made accordingly.

CALCUTTA,
26th November, 1951.

K. S. CAMPBELL-PURI, *Chairman*,
Central Government Industrial Tribunal, Calcutta.

[No. LR-3(158)I.]

N. C. KUPPUSWAMI, *Under Secy.*

New Delhi, the 10th December 1951

S.R.O. 2003.—In pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Central Government hereby directs that the following further amendments shall be made in the notification of the Government of India in the Ministry of Labour, No. SS.21(2)(2), dated the 6th September, 1948, namely:—

In the said notification, for items (9) and (12), the following items shall be substituted, namely:—

“(9) Shri S. C. Mukherji, I.A.S., Secretary to the Government of Bihar, Labour Department, Patna.

“(12) Shri Mangat Rai, I.A.S., Secretary to the Government of Punjab, Health and Local Government Departments, Simla.

[No. SS.121(53).]

S. MULLICK, *Dy. Secy.*